Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/1. IN GENERAL/(1) GENERAL PRINCIPLES AND ORIGINS OF CROWN PROPERTY/201. Particular rules for Crown property.

CROWN PROPERTY (

1. IN GENERAL

(1) GENERAL PRINCIPLES AND ORIGINS OF CROWN PROPERTY

201. Particular rules for Crown property.

The general rules governing Crown property are the same as for the property of private persons. However, there are special considerations affecting the Crown.

Firstly, the Crown is regarded in law as the source of certain private rights. Freehold land is held by tenure in fee simple from a superior who is (directly or, more rarely, indirectly) the Crown and certain rights, particularly franchises, are considered in law to derive from a Crown grant[1]. Therefore where land is held directly by the Crown as allodial land it may be subject to special rules. Similarly the Crown's prerogative right to casual revenues (some of which may be held by private owners as franchises[2]) may be subject to special rules[3].

Secondly, the quiet enjoyment of legal rights depends on the ability of the person entitled to them to enforce them. The Crown in Parliament is the source of all statute law (which in the absence of express extension or necessary implication does not bind the Crown) and therefore statutory rights can apply differently to Crown land[4]. Ministers of the Crown are responsible for the enforcement of legal rights and this may affect the enforcement of Crown rights[5]. The status of the Crown in the courts (and particularly the difficulty of claiming on a covenant against the Crown) can affect legal rights of and against the Crown[6].

Thirdly, the Crown is one and indivisible[7] but it operates through a variety of different agencies which have differing degrees of legal standing and independence from the Crown as such[8]. Assets may pass from the management of what used to be called one 'emanation' to another[9]. A person dealing with the Crown in one form may need to know if property is administered by the Crown in another aspect.

1 As to Crown grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 849 et seq.

2 See PARA 216 post.

3 As to casual revenues see PARA 216 et seq post. As to the royal prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

4 As to statutes affecting Crown property see PARAS 209-210 post. As to Crown immunity see STATUTES vol 44(1) (Reissue) PARA 1321.

5 As to ministers of the Crown see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354.

6 As to proceedings by or against the Crown generally see CROWN PROCEEDINGS AND CROWN PRACTICE.

7 See PARA 213 post.

8 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 15, 351 et seq.

9 See PARA 213 post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/1. IN GENERAL/(1) GENERAL PRINCIPLES AND ORIGINS OF CROWN PROPERTY/202. Principles governing Crown property.

202. Principles governing Crown property.

The rules of the common law apply to lands and other property held by or on behalf of the Crown as they apply to those of subjects[1]. This title sets out the special rules that have developed as a result of the special position and history of the Crown but in default of particular rules the common law applies.

The Crown is exempt from statutes unless they are applied either expressly or by necessary implication[2]. There are special rules of procedure, particularly in relation to court procedure[3].

The origins of the special rules for Crown property derive from the power of government which used to belong to the monarch[4]. Although the Crown is said to be one and indivisible[5], it may now be seen as comprising several different interacting authorities[6]; and the rules of interaction, while generally not justiciable, are recognised by the law[7].

1 See generally REAL PROPERTY.

2 See STATUTES vol 44(1) (Reissue) PARA 1321. As to statutes affecting Crown property see PARAS 209-210 post.

3 See CROWN PROCEEDINGS AND CROWN PRACTICE.

4 As to the monarch as Head of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 14.

5 See PARAS 201 ante, 213 post.

6 See PARAS 201 ante, 213 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 15, 351 et seq.

7 As to constitutional conventions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 19 et seq.

203. Origins of Crown property.

The royal estates are of ancient origin, deriving from the way that the Norman kings took over the lands of the Anglo Saxon rulers. Some of the Anglo Saxon rulers had themselves succeeded to the Roman administration, whose lands had often been acquired from tribal rulers in power before the Roman conquest. Late Saxon kings held a variety of lands and rights to support their duties of government and defence. There is some evidence that a distinction was drawn between the hereditary lands of the monarch which he was expected to pass on to his successor and his own lands acquired by gift or inheritance which he was free to dispose of as he wished[1].

Following the Norman conquest in 1066, it became established that all royal lands were of the same nature at the disposal of the monarch. Royal lands formed part of the revenues of the Crown out of which the monarch was expected to carry on the normal administration of the country. Royal lands were constantly enhanced by escheats[2], forfeitures[3] and inheritances but also constantly reduced by grants to younger sons or to royal servants and by sales. Thus any particular manor or estate might pass into and out of the Crown Estate several times over the centuries. The monarch was expected, however, to retain sufficient to support his expenses, or 'live of his own', no distinction being made between public and private revenues.

The sources of Crown revenue were classed as 'ordinary revenues' and 'extraordinary revenues'[4]. Extraordinary revenues[5] were those voted by Parliament, originally for special purposes such as a foreign war. Ordinary revenues were (1) seigniorial revenues[6]; (2) rents of Crown lands[7]; and (3) casual revenues[8].

1 See the Will of Alfred, King of the West Saxons (who died in 899 AD).

2 As to escheat see PARA 231 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 254.

3 As to forfeiture see REAL PROPERTY vol 39(2) (Reissue) PARA 253.

4 Chitty *Law of the Prerogatives of the Crown* (1820) p 200.

5 As to extraordinary revenues see PARA 206 post.

6 As to seigniorial revenues see PARA 204 post.

7 As to rents and profits from Crown lands see PARA 205 post.

8 As to casual revenues see PARA 216 et seq post.

(2) CERTAIN TYPES OF REVENUES

204. Seigniorial revenues.

Under the so-called feudal system[1] the monarch as ultimate feudal lord was entitled to incidents of tenure. These seigniorial revenues formed part of the ordinary revenues[2]. By the seventeenth century it became virtually impossible for the monarch to carry on government on the strength of the ordinary revenues alone, and the over-exploitation of such revenues by Charles I was a major cause of the Civil War of 1642. Since the Restoration of Charles II, such incidents of tenure and seigniorial revenues have mainly been abolished[3].

The right to escheat derives from feudal incidents of tenure[4].

1 As to the feudal system see REAL PROPERTY vol 39(2) (Reissue) PARA 4 et seq.

2 As to the ordinary revenues see PARA 203 ante. See also PARAS 205, 216 et seq post.

3 See the Tenures Abolition Act 1660 s 4; and REAL PROPERTY vol 39(2) (Reissue) PARA 10.

4 As to escheat see PARA 231 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 254.

205. Crown lands.

The second principal source of ordinary revenues was rents and profits from Crown lands[1]. These could in principle be managed in hand but this was not a major source of royal revenue[2]. Their main function was to be leased at rents, providing a regular and predictable source of revenue, but, where larger sums of money were needed, Crown lands were sold. In order to preserve revenue from Crown lands, Parliament brought in legislation restricting the alienation of Crown land to the granting of leases for not more than 31 years or three lives at not less than the ancient rent or (if none) at a reasonable rent[3]. This legislation forms the basis of the modern law relating to Crown lands and applies unless there is a specific statutory provision to the contrary. In practice there is specific provision for most Crown lands[4], but a prospective purchaser from a Crown authority should ensure that a power of sale exists or the conveyance or transfer will be void.

1 See 1 Bl Com (14th Edn) 286. As to the ordinary revenues see PARA 203 ante. See also PARAS 205, 216 et seq post.

2 The Crown took the produce directly from some Crown lands, and a substantial income was derived from the sale of timber. As to royal forests see FORESTRY vol 52 (2009) PARAS 1, 5.

3 See the Crown Lands Act 1702 s 5. See further PARAS 284, 308 post.

4 For provisions relating to the Crown Estate see PARA 278 et seq post; for provisions relating to the Duchy of Lancaster see PARAS 300-317 post; and for provisions relating to the Duchy of Cornwall see PARAS 318-353 post.

206. Extraordinary revenues.

Certain revenues derived from taxation, which were formerly settled upon the Crown by statute, have been surrendered to the nation[1] and are now mainly paid into the Consolidated Fund[2] to form part of the public revenue[3]. Such revenues are those derived from the Post Office, which are now paid into the Consolidated Fund[4]; the hereditary excise on beer, ale and cider, which is no longer chargeable; certain duties derived from wine licences[5]; and the 4 per cent, or West India, duties, now abolished[6].

Some importance still attaches to the history of these revenues owing to the legal possibility of resumption of the hereditary revenues by the Crown[7].

1 George III made the original surrender of land revenues in England (other than those of the Duchies of Lancaster and Cornwall), and of Post Office revenues, hereditary excise duties on beer, ale and cider, the annuity in lieu of wine licence duties and the small branches of the hereditary revenue in return for an annuity of £800,000, upon which were charged the salaries of the judges and Civil Service, certain pensions and other public expenses: see 1 Geo 3 c 1 (Civil List) (1760) (repealed). Further revenues were surrendered by an Act of the Irish Parliament: see 32 Geo 3 c 1 (1792) (repealed). William IV surrendered, in addition, the hereditary revenues of Scotland (except those of the Principality) and the 4 per cent, or West India, duties, since abolished: see 1 Will 4 c 25 (Civil List) (1831) (repealed). A similar arrangement was made by Queen Victoria, who received a fixed income of £385,000: see the Civil List Act 1837 ss 2, 3 (both repealed). Under the Civil List Act 1901 s 9(3) (repealed), the hereditary excise duties ceased to be chargeable.

See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 707.

2 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

3 The Acts by which some of such revenues were conferred have been repealed, with a saving of the rights of the Crown.

4 The Post Office revenues were settled upon the Crown by 1 Jac 2 c 12 (Post Office etc Revenues) (1685) (repealed), a portion being diverted to public uses by 27 Geo 3 c 13 (Customs and Excise) (1787) s 48 (repealed). Despite the repeal of these Acts, the rights of the Crown were expressly saved: see the Statute Law Revision Act 1871 s 1. The terms of the saving clause are similar to those set out in note 5 infra. As to the revenue of the Post Office see POST OFFICE.

5 The hereditary excise and a duty on wine licences were settled upon the Crown in 1660 for ever in lieu of the revenues arising from the military tenures, and from the rights of pre-emption and purveyance, which were abolished by the same legislation: see the Tenures Abolition Act 1660 ss 15-27 (repealed). The hereditary excise was suspended by the Civil List Act 1837 s 7 (repealed), with a saving of the rights of the monarch's successors. The Civil List Act 1901 s 9(3) (repealed) directed that the hereditary excise should cease to be chargeable. The hereditary duties on wine licences were abolished in 1757, and a sum of £7,002 derived from stamp duties on the new wine licences settled upon the Crown instead by 30 Geo 2 c 19 (National Debt) (1757) ss 7, 13 (both repealed). This sum was directed to be paid into the public revenue by 1 Geo 3 c 1 (Civil List) (1760) s 3 (repealed). The repeal of the two latter Acts does not affect any right to any hereditary revenues of the Crown or any charges on them, or prevent the repealed enactments from being enforced for the collection of any such revenues or otherwise in relation to them: see the Statute Law Revision Act 1867 s 1; and the Statute Law Revision Act 1870 s 1 (repealed).

6 See note 1 supra.

7 See PARA 208 post.

207. Surrender of Crown lands and casual revenues.

By the accession of George III it had become clear that it was no longer possible for the monarch to carry on the government with the ordinary revenues[1] and the various extraordinary revenues[2] voted by Parliament for this purpose. Accordingly since that date[3] it has been customary for each succeeding monarch to surrender the hereditary revenues to the nation for the term of his life, in return for an annual income, known as the Civil List[4]. As a result of the various surrenders, which are cumulative in effect, the produce of the hereditary revenues (including the revenues derived from the Osborne Estate[5], but excepting those derived from the Duchies of Lancaster and Cornwall and the Principality of Scotland[6]), and the produce of the small branches of the hereditary revenue[7], and of the casual revenue arising from any droits of Admiralty or of the Crown, together with the surplus revenues of Gibraltar or any other possession of the Crown out of the United Kingdom[8], and all casual revenues at home and abroad, are to be paid into the Exchequer and form part of the Consolidated Fund[9] during the current reign and six months thereafter[10]. In return for this surrender, in addition to the allowances made to certain members of the royal family, the monarch receives a fixed annual income, still known as the Civil List, although now cleared of all charges for the Civil Service[11] and other public expenses, which are thrown directly on the Consolidated Fund[12].

1 As to the ordinary revenues see PARA 203 ante.

2 As to the extraordinary revenues see PARA 206 ante.

3 See 1 Geo 3 c 1 (Civil List) (1760) (repealed).

4 The Civil List is so called because the salaries of the Lord Chancellor, the judges and of the Civil Service were originally charged upon it: see 1 Geo 3 c 1 (Civil List) (1760) s 6 (repealed). As to the Civil List see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq.

5 Under the will of Queen Victoria the Osborne Estate passed to Edward VII for life. On his coronation, however, the estate was directed by statute to be vested in the Crown in right of the Crown, and to cease to be part of the monarch's private estates: see the Osborne Estate Act 1902. The statutory provision which directs payment of hereditary revenues into the Exchequer applies to the Osborne Estate: see the Civil List Act 1910 s 1 (repealed: see now the Civil List Act 1952 s 1).

6 The revenues of the Duchies of Lancaster and Cornwall were expressly excluded from the original surrender by George III (see PARA 206 note 1 ante), and have been since retained by the Crown. As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARAS 318-353 post. The revenues of the Duchy of Cornwall belong to the heir apparent when such a person exists, as do also those of the Principality of Scotland. As to the heir apparent see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARAS 30-31. The revenues of the former county palatine of Durham, in so far as they are revested in the Crown, have become merged in the rest of the hereditary revenues, and are therefore included in the surrender of these revenues: see PARAS 249, 298 post.

7 Eg bona vacantia: see PARA 231 et seq post.

8 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

9 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

10 See the Civil List Act 1952 s 1. As to earlier surrenders see PARA 206 note 1 ante.

11 As to the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549 et seq.

12 The last item of public expenditure formerly charged on the Civil List, namely £10,000 per annum for secret service money, was thrown upon the Consolidated Fund by the Civil List Act 1837 s 15 (repealed).

208. Resumption of surrendered revenues.

The surrendered hereditary revenues are legally liable to resumption by the monarch succeeding on the demise of Elizabeth II[1] but, as surrender has now become customary, resumption of the hereditary revenues may no longer be possible in practice[2]. However, any rights or powers[3] for the time being exercisable with respect to any of the surrendered hereditary revenues have been reserved[4].

1 In such an event the hereditary revenues would presumably be liable to contribution towards the expenses of public government.

2 It has been said that 'a surrender of this kind once made is virtually irrevocable' (3 Walpole's History of England (1880 Edn) p 395), and the principle of surrender has been described as being now governed by 'a custom strong as law' (Freeman *Growth of the English Constitution* (2nd Edn) p 140). See also the debate on the Civil List Act 1837: 39 HC Official Report (3rd series) cols 180, 181, 1356-1365. The possibility of a resumption is, however, contemplated by the Crown Lands Act 1936 s 9(2) proviso; and the Forestry Act 1967 s 43(2) (see FORESTRY vol 52 (2009) PARA 51).

3 Such rights or powers include the right to redress hardships out of royal bounty. As to redress of hardships see eg *The Odessa, The Woolston* [1916] 1 AC 145 at 164, PC (redress of hardships caused by the condemnation as prize of enemy goods pledged to a subject).

4 See the Civil List Act 1952 s 13(2).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/1. IN GENERAL/(3) APPLICATION OF THE LAW TO THE CROWN/209. Statutes applicable to Crown land.

(3) APPLICATION OF THE LAW TO THE CROWN

209. Statutes applicable to Crown land.

There are specific statutes which now govern the management of Crown lands[1]. There are also provisions which relate to Crown land in numerous other Acts[2], as well as general Acts relating to property that bind the Crown[3]. Most statutes dealing with land contain a Crown application clause[4].

In construing the Crown application clauses of statutes certain distinctions need to be drawn. If the Act says simply that it binds the Crown, it binds the Crown in all capacities and aspects[5]. More often the clause refers specifically to certain aspects often described as 'the appropriate authority'[6], distinguishing between land belonging to the monarch in right of the Crown, land belonging to the monarch in right of the Duchy of Lancaster[7], land belonging to (or the possessions of) the Duchy of Cornwall[8], land belonging to a government department and land held in trust for the monarch for the purposes of a government department. Land belonging to the monarch in right of the Crown may be further distinguished as either land under the management of the Crown Estate Commissioners[9] or land not under their management. Where a liability in tort is being imposed in relation to the occupation of Crown land it is usual to provide that the Crown will not be bound further than under the Crown Proceedings Act 1947[10].

1 Eg the Crown Lands Act 1702 (see PARAS 205, 284, 289, 308, 364 post); the Civil List Acts 1952 and 1972 (see PARAS 207-208 ante; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq); the Crown Estate Act 1961 (see PARA 278 et seq post); the Duchy of Lancaster Acts (see PARA 300 et seq post); the Duchy of Cornwall Management Acts (see PARA 318 et seq post); and the Crown Private Estates Acts (see PARA 357 et seq post).

2 See eg the Defence Act 1842 s 39 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision (No 2) Act 1890).

3 Eg the Law of Property Act 1925 binds the Crown: see s 208(2), (3).

4 See eg the Occupiers' Liability Act 1957 s 6; the Occupiers' Liability Act 1984 s 3 (and NEGLIGENCE vol 78 (2010) PARAS 29, 40); and the Limitation Act 1980 s 37 (and LIMITATION PERIODS vol 68 (2008) PARA 903). As to Crown immunity from the application of statutes generally see STATUTES vol 44(1) (Reissue) PARA 1321.

5 See eg the Environment Act 1995 s 115; and WATER AND WATERWAYS vol 100 (2009) PARA 20.

6 See eg the Highways Act 1980 s 327; and HIGHWAYS vol 21 (2004 Reissue) PARA 32. Cf s 58(3); and HIGHWAYS vol 21 (2004 Reissue) PARA 302.

7 As to the Duchy of Lancaster see PARAS 300-317 post.

8 As to the Duchy of Cornwall see PARAS 318-353 post.

9 As to the Crown Estate Commissioners see PARA 280 et seq post.

10 See eg the Landlord and Tenant Act 1988 s 6; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 490. As to the Crown Proceedings Act 1947 see CROWN PROCEEDINGS AND CROWN PRACTICE.

UPDATE

209 Statutes applicable to Crown land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

210. Crown immunity in rem or in personam.

Crown immunity from the application of statutes[1] may be in rem or in personam. If a statute or rule applies in rem then it applies to a property irrespective of the identity of any person having an interest in it and if the Crown exemption applies in rem then the exemption will be taken to apply to all interests in the property. If the statute or rule applies in personam then it will apply to individual holders of interests and a Crown exemption will not exempt the holders of private interests in the land[2].

1 As to the application of statutes to the Crown and Crown immunity see PARA 209 ante; and STATUTES vol 44(1) (Reissue) PARA 1321.

2 See *Carter v SU Carburettor Co* [1942] 2 KB 288, CA, where it was held that a statutory right relating to rent and mortgage interest was a right in rem and applied irrespective of the personality of the tenant. Applying that case, it was held in *Rudler v Franks* [1947] KB 530 that where a tenant held a headlease from the Crown which he sublet, the Crown exemption applied to the property so that the subtenant was not protected against the head tenant. In consequence, Crown application clauses were inserted in subsequent Rent Acts to give protection to subtenants. This continued until the Housing Act 1980 s 73 (as originally enacted) (see LANDLORD AND TENANT) extended the Rent Acts to tenancies of land under the management of the Crown Estate Commissioners, and tenancies from the Duchies of Lancaster and Cornwall. See also *Molton Builders Ltd v City of Westminster Borough Council* (1975) 30 P & CR 182, CA (Crown Estate Commissioners consented to service of a local authority enforcement notice; tenant could not claim the Crown Estate Commissioners were derogating from their grant); *Spook Erection Ltd v Secretary of State for the Environment and Cotswold District Council* [1988] 2 All ER 667, 86 LGR 736, CA. As to the Crown Estate Commissioners see PARA 280 et seq post. As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARAS 318-353 post.

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211. Custom.

The monarch is not bound by custom, but in the same way that she may take advantage of statutes, although not bound[1], so also, it seems, the monarch may take advantage of custom[2].

1 As to Crown immunity see STATUTES vol 44(1) (Reissue) PARA 1321.

2 See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 49.

212. Rights in land between Crown and subjects.

The normal rules of the common law relating to land are modified in respect of relationships between Crown and subjects because of the special standing of the Crown.

In particular, the Crown cannot (except where statute otherwise provides) be liable on an action of covenant in the courts and cannot be sued on a restrictive covenant. If, however, the Crown Estate Commissioners[1] acquire land subject to a restrictive covenant they may give a covenant for indemnity or enter into a new covenant on purchase and they will be liable on it. Similarly the Chancellor or Vice-Chancellor of the Duchy of Lancaster will be liable on a restrictive covenant[2]. In the case of Crown private estates any covenant which is required will be given by the Keeper of the Privy Purse[3]. By statute, the Duke of Cornwall may enter into covenants[4]. He is not liable personally on the covenant, but it may be specifically enforced against the keeper of the records[5].

For the same reason, there are problems in leases being held by the Crown. The rules may originally have derived from copyhold[6] but relate to the procedural problems on an action of covenant. Accordingly leases are taken in the names of nominees except in the case of the Duke of Cornwall[7].

There are no such problems in leases from the Crown. As the Crown cannot be liable on a covenant, leases granted contain no covenant for quiet enjoyment. Leases of Crown Estate land contain no covenant at all, although a warranty is implied at common law. Leases of Duchy of Cornwall lands contain a proviso for quiet enjoyment in the clause dealing with re-entry.

There is no problem for covenants by and leases to government departments. A Minister of the Crown or Secretary of State can sue and be sued in covenant under the Crown Proceedings Act 1947[8].

Where land burdened with obligations by reason of tenure becomes Crown land it appears that the burden is suspended but will revive if the land is disposed of to a subject[9].

The Crown may in appropriate circumstances be a trustee for other persons[10], but the word 'trust' when used in public law may simply indicate the existence of a public law duty rather than a trust enforceable by the rules of private law[11].

1 As to the Crown Estate Commissioners see PARA 280 et seq post.

2 As to the Chancellor and Vice-Chancellor of the Duchy of Lancaster see PARA 305 post.

3 As to Crown private estates see PARA 354 et seq post; and as to the privy purse see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 68.

4 See the Duchy of Cornwall Management Act 1863 s 24 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)). As to the Duchy of Cornwall see PARAS 318-353 post.

5 See the Duchy of Cornwall Management Act 1863 s 24 (as amended: see note 4 supra). See also PARA 341 post. As to the keeper of the records see PARA 322 post.

6 Scriven on Copyholds (7th Edn) 29. See also *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 381, [1977] 1 All ER 813 at 817-818, HL, per Lord Diplock. As to copyhold see CUSTOM AND USAGE; REAL PROPERTY.

7 Duchy of Cornwall Management Act 1982 s 2.

8 See CROWN PROCEEDINGS AND CROWN PRACTICE. As to Ministers of the Crown and the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

9 *R v Duchess of Buccleugh* (1704) 6 Mod Rep 150, sub nom *R v Duchess of Bucklugh* 1 Salk 358 (land which had come into the Duchy of Lancaster alleged to be subject to an obligation to repair a bridge).

10 See eg the Crown Estate Act 1961 s 8(2). See also the cases cited in note 11 infra.

11 *Kinloch v Secretary of State for India in Council* (1882) 7 App Cas 619, HL; *Civilian War Claimants Association Ltd v The King* [1932] AC 14; *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 382, [1977] 1 All ER 813 at 818, HL, per Lord Diplock.

UPDATE

212 Rights in land between Crown and subjects

NOTES--As to the offence of trespassing on Crown land, see the Serious Organised Crime and Police Act 2005 s 128; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 554. Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/1. IN GENERAL/(3) APPLICATION OF THE LAW TO THE CROWN/213. Relations between aspects of the Crown.

213. Relations between aspects of the Crown.

The Crown is one and indivisible[1] and hence the courts will not inquire into relations between different aspects of the Crown[2]. However, distinctions must be drawn[3]. For example, Crown lands have at different times been under the management of different bodies with different successors[4], so that if a question arises as to some act of management in the past it may be necessary to inquire into the Crown authority responsible for management at the relevant time.

Where any question arises as to what is the appropriate authority in relation to any land, the question may be referred to the Treasury[5].

With the consent of the monarch (1) the Treasury may transfer to the Crown Estate Commissioners[6] the management of houses within any of the royal forests, parks or chases[7]; and (2) arrangements may be made on such terms as the Treasury may approve for any house forming part of the Crown Estate to be, or to cease to be, at the disposal of the monarch[8].

Because the monarch is a separate person from a Secretary of State or a Minister of the Crown or the Duke of Cornwall there can be a valid lease or conveyance between them but it will not give rise to justiciable rights and duties until the separate legal estate becomes vested in a person other than the Crown[9]. When the Duchy of Cornwall is vested in the Crown rights formerly enjoyed over one estate for the benefit of the other will not merge[10].

Leases may be made between different aspects of the Crown, for example to enable Crown lands of one authority to be made available for the defence of the realm[11]. The precise status of the legal relationship so established is unclear but if the interest of the 'landlord' were to be disposed of to a subject the courts would then recognise the existence of a legal estate held by the Secretary of State for Defence[12].

The phrase 'emanation of the Crown' has often been used in the past in relation to different Crown authorities but its use is now discouraged by the courts[13].

1 *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL. See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 1 et seq. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Legal disputes between different aspects of the Crown have to be pursued through nominees. See eg *Dyke v Walford* (1848) 5 Moo PCC 434 (which was in substance a case between the Crown and the Duchy of Lancaster concerning bona vacantia).

3 *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 381, [1977] 1 All ER 813 at 817-818, HL, per Lord Diplock.

4 See eg para 278 et seq post.

5 See eg the Town and Country Planning Act 1990 s 293(3); and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 11. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

6 As to the Crown Estate Commissioners see PARA 280 et seq post.

7 See the Crown Lands Act 1927 s 13(1).

8 See the Crown Estate Act 1961 s 5(5). See also, for example, the Osborne Estate Act 1902 s 1(1).

9 Cf *Ingram v IRC* [1997] STC 1234 (private persons). As to Ministers of the Crown and the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

10 *R v Inhabitants of Hermitage* (1692) Carth 239, 90 ER 743. As to the Duchy of Cornwall see PARAS 318-353 post. As to the vesting of the duchy in the Crown see PARAS 320, 326 post.

11 See the Military Lands Act 1892 s 10 (as amended); and ARMED FORCES.

12 As to the Secretary of State for Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq.

13 *Gilbert v Corpn of Trinity House* (1886) 17 QBD 795; *International Rly Co v Niagara Parks Commission* [1941] AC 328, [1941] 2 All ER 456, PC; *Territorial and Auxiliary Forces Association of the County of London v Nichols* [1949] 1 KB 35; *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL.

214. Crown surveys etc as evidence.

An ancient extent of Crown land found in the proper office, and purporting to have been taken by a steward of that land, and following in its construction the directions of certain statutory provisions[1], will be presumed to have been taken under competent authority, even though the commission cannot be found[2]; but a document purporting to be a survey of a manor founded on the presentment of the tenants is inadmissible either as a document made under public authority or as evidence of reputation[3].

Documents deposited in the Public Record Office[4] may be proved by examined copies, even though the originals purport to be the rentals of former grantees of the Crown. Expired leases by the Crown of land or mines tendered in evidence as acts of ownership by the Crown are similarly provable by examined copies, even though the originals may not have been enrolled in the proper time[5].

A document purporting to be a survey of a manor made while it was part of the Crown's possessions, and coming out of the proper custody, is admissible as evidence of the boundaries and customs of the manor[6].

1 Ie the provisions of 4 Edw 1 stat 1 (Extent of Manor) (1276) (Ruff).

2 *Rowe v Brenton* (1828) 8 B & C 737 at 747. It is evidence of the Crown's title to land stated in it to have been purchased by the Crown from a subject: *Doe d William IV v Roberts* (1844) 13 M & W 520. As to evidence of boundaries and of the extent of manors see also BOUNDARIES vol 4(1) (2002 Reissue) PARA 935; CUSTOM AND USAGE.

3 *Evans v Taylor* (1838) 3 Nev & PKB 174; *Duke of Beaufort v Smith* (1849) 4 Exch 450.

4 As to the Public Records Office see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 838. See also PARA 288 note 2 post.

5 *Doe d William IV v Roberts* (1844) 13 M & W 520.

6 *Smith v Earl of Brownlow* (1870) LR 9 Eq 241. A survey taken by commission from the Crown, when seised of a manor, is admissible evidence to show what was the demesne land of the manor at that time: *Dimes v Arden* (1836) 6 Nev & MKB 494.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/1. IN GENERAL/(3) APPLICATION OF THE LAW TO THE CROWN/215. Radical title of the Crown.

215. Radical title of the Crown.

It is fundamental to the English law of real property that all lands of subjects (whether freehold or leasehold) are held by a form of tenure[1]. In the absence of a mesne lord, now a very rare occurrence, land is held from the Crown in chief. This may be in one of two ways, the distinction deriving from the origin of private interests. If the land was granted out of a manor or an honour, whether that was at the time of grant held by the Crown or a mesne lord, tenure is ut de honore but if there was no separate superior interest then the land is held ut de corona[2]. Where the monarch granted a new manor or other right, the grantee held direct as tenant in chief from the Crown as such and direct holdings were subject to special rules which did not apply to land held from a mesne lord. However, where such a manor or other seigniory had been held by a subject, with a sub-manor or freehold derived out of it and it subsequently came back to the Crown, for example by escheat, it was decided that the inferior tenant should not be penalised because his immediate lord was now the monarch[3].

Freehold tenants hold (either from the Crown or from a mesne lord) in fee and (except for certain ancient parish lands where the fee simple is in abeyance[4]) in fee simple. The monarch was said to hold land[5] but he did not hold it from anyone. He was sovereign, with no earthly superior. By analogy with non-feudal tenures in Europe this is termed allodial. There seem to have been allodial tenures in England before the Norman Conquest and some survivors are mentioned in Domesday Book but by or soon after 1100 all land of subjects was held by tenure in benefice[6]. The interest of the Crown in such freehold land is now known as its radical title[7] and is not a fee. Crown land that has never been granted to a subject or which has come back to the Crown because the tenure has ceased (for example, by escheat or forfeiture) is still held allodially. The Crown may however hold the fee simple in land as a separate asset from the fee[8]. This may occur if the Crown has purchased the land by a conveyance[9] or where the title is registered and the monarch is shown as registered proprietor. Freehold land held by a government department or land held in trust for the monarch[10] will also comprise a fee simple[11]. It appears that the possessions of the Duchy of Cornwall are held in fee even when the duchy is vested in the Crown[12] and the same appears true of the Duchy of Lancaster. Thus allodial land primarily comprises the ancient possessions of the Crown Estate which have not been granted to a subject and repurchased[13].

1 See REAL PROPERTY.

2 *Re Holliday* [1922] 2 Ch 698. See also CUSTOM AND USAGE vol 12(1) (Reissue) PARA 696.

3 Pollock and Maitland's History of English Law (2nd Edn) vol 1 pp 281-282.

4 See ECCLESIASTICAL LAW.

5 In the Domesday Book it is consistently said that the monarch holds ('tenet') lands and manors.

6 Fitzneal *De necessariis observantiis scaccarii dialogus* (Dialogue of the Exchequer) pp 194-195. See also REAL PROPERTY vol 39(2) (Reissue) PARA 4.

7 As to radical title see *Mabo v Queensland* (No 2) (1992) 107 ALR 1, Aust HC.

8 Compare the preservation of a leasehold estate from merger where the reversioner wishes to keep it in being: see REAL PROPERTY.

9 Since the Statute Quia Emptores (ie 18 Edw 1 (Quia Emptores) (1289-90)) any assurance of land in fee simple between subjects takes effect by substitution not by subinfeudation: *Re Holliday* [1922] 2 Ch 698. No

one can be substituted for the Crown and therefore conveyances out of the Crown allodium take effect by infeudation. Like other statutes, the Statute Quia Emptores was not binding on the Crown. It is unclear if grants out of the royal duchies are substitution or subinfeudation, but, as escheats were consistently claimed in duchy manors until 1925, such grants are probably the latter. A Land Registry transfer or a conveyance of a subsisting fee simple belonging to the Crown Estate is a substitution but without prejudice to the Crown's radical title.

10 Leasehold land will always be held in trust for and not by the monarch, who cannot be liable in covenant in the courts: see PARA 212 ante.

11 Cf *Ingram v IRC* [1997] STC 1234.

12 *R v Inhabitants of Hermitage* (1692) Carth 239, 90 ER 743. As to the Duchy of Cornwall see PARAS 318-353 post. As to the vesting of the duchy in the Crown see PARAS 320, 326 post.

13 Eg the foreshore and land subject to the Crown Lands Act 1702 (see PARA 364 post), such as royal palaces. As to the foreshore see PARA 242 et seq post; and as to royal palaces see PARA 365 post. As to the Crown Lands Act 1702 see PARAS 205 ante, 284, 289, 308, 364 post.

2. CASUAL REVENUES

(1) IN GENERAL

216. Casual revenues.

The casual revenues of the Crown are those that arise from time to time unpredictably and irregularly. In general they arise out of the royal prerogative[1]. Some are incapable of being granted to a subject[2]; some, though capable of being granted, rarely are granted[3]; and some are frequently granted[4].

If granted to a subject, such casual revenues generally become franchises[5] and thereby lose any special Crown exemption, becoming a right of property like any other[6]. If such rights revert to the Crown, for example by being held with a manor which escheats, they cease to be a separate right of property and merge in the Crown prerogative[7]. They include the rights to wreck[8], treasure[9], waifs[10], estrays[11], royal fish and swans[12] and fisheries[13]. A county palatine is of this kind[14]. By contrast, where a right has been granted as a franchise and the grant created something new, such as a market, rather than diminishing the existing revenues of the Crown, then if it comes back, as on escheat, it does not merge. Some types of new grant, such as corporate status, may cease to exist; but on dissolution of a corporation any rights, such as property, will come to the Crown as bona vacantia[15].

Certain casual revenues, rarely granted to subjects, do not become franchises. It is unclear if this is a matter of law, policy or Crown practice. Certain of them could be held with a county palatine and the royal duchies included certain of them[16]. Such revenues include royal mines[17], swans[18], royal fish[19] and bona vacantia[20].

There are also the revenues derived from droits of Admiralty[21], from the courts of justice, from fines, recognisances, legal fees and forfeitures[22], and from prerogatives connected with the Church, such as the temporalities of bishoprics during vacancies[23].

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 See PARA 217 post; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARAS 57-59.

3 Eg royal minerals (see PARA 218 et seq post), royal fish (see PARA 229 post) and swans (see PARA 230 post).

4 Eg fisheries (see PARA 228 post; and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq), waifs (see PARA 371 post) and estrays (see PARA 372 post).

5 As to franchises see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879. A franchise is a royal privilege or branch of the royal prerogative subsisting in the hands of a subject by grant from the monarch: Chitty *Law of the Prerogatives of the Crown* p 119. Franchises may include rights such as markets or corporate status which did not exist until the grant.

6 S*pook Erection Ltd v Secretary of State for the Environment and Cotswold District Council*[1988] 2 All ER 667, 86 LGR 736, CA.

7 *Abbot of Strata Mercella's Case* (1591) 9 Co Rep 24a; *A-G v Trustees of the British Museum*[1903] 2 Ch 598 at 62 per Farwell J. As to escheat see PARA 231 et seq post.

8 See PARAS 270-277 post.

9 See PARA 373 post; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq.

10 See PARA 371 post.

11 See PARA 372 post.

12 See PARAS 229-230 post.

13 See PARA 228 post. As to sporting rights see PARA 228 post.

14 As to counties palatine see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307. See also PARAS 248-251 post.

15 As to bona vacantia see PARA 231 et seq post. As to corporations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1304.

16 As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARA 318-353 post.

17 See note 3 supra; and PARA 218 et seq post.

18 See note 3 supra; and PARA 230 post.

19 See note 3 supra; and PARA 229 post.

20 See PARA 231 et seq post.

21 As to Admiralty droits see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 122, 139. For the distinction in time of war between Admiralty droits and droits of the Crown see PRIZE.

22 Fines etc were formerly chargeable with certain judicial salaries, but are now paid into the Consolidated Fund with the rest of the hereditary revenues. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

23 As to temporalities of bishoprics see ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/2. CASUAL REVENUES/(1) IN GENERAL/217. Prerogatives which may not generally be granted.

217. Prerogatives which may not generally be granted.

Apart from the franchises which are granted out of the prerogative[1], the general rule at common law is that the monarch may not grant to another the prerogatives of the Crown[2]. The monarch may not grant away personal prerogatives such as the pardoning of offences[3], and cannot, in general, grant anything which is prejudicial to the administration of justice[4] nor by grant derogate from public or private rights of the subject, which are protected by Magna Carta[5].

1 See PARA 216 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879.

2 Vin Abr, Prerogative, M, b, pl 20; Bro Abr, Prerogative, pl 60. See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 57.

3 Bac Abr, Prerogative, F, 1; and see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 58. As to pardons see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 823 et seq.

4 See CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 59.

5 See Magna Carta of Edward I (1297) c 1; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 59. As to rights of the subject see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS.

(2) MINERALS

218. Gold and silver mines.

By prerogative right the Crown is entitled to all mines of gold and silver within the realm, whether the mines are situate in its own land or in the land of a subject[1]. The Crown may grant the right to royal mines in the form of a franchise, but royal mines will not pass by implication in a grant of franchises[2].

1 *Case of Mines* (1567) 1 Plowd 310 at 315-316, Ex Ch; Bac Abr, Prerogative, B 8; 1 Bl Com (14th Edn) 294. This prerogative is said to owe its origin to the monarch's need of supplies for war and the coinage: *Case of Mines* supra; 1 Bl Com (14th Edn) 294. Mines of gold and silver in the county palatine of Durham were revested in the Crown: see the Durham (County Palatine) Act 1836 s 1 (repealed); and the Durham County Palatine Act 1858 s 5 (repealed). As to the county palatine of Durham see PARAS 249-251 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

Statutory provisions relating to the fee simple in coal and coal mines, which include other minerals comprised in leases giving rights of working coal and those minerals, do not bind the Crown as regards gold, gold ore, silver and silver ore: see the Coal Act 1938 ss 3, 42(1) proviso (both repealed); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 1. Nothing in the Limitation Act 1980 (see LIMITATION PERIODS) affects the prerogative right to any gold or silver mine: see s 37(6).

See also PARA 219 post.

2 *Case of Mines* (1567) 1 Plowd 310, Ex Ch. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 860, 879.

219. Mines of base metals.

Since 1688[1] the right to gold and silver mines[2] does not extend to mines of copper, tin, iron or lead, which are not to be adjudged, taken or reputed to be royal mines even though gold or silver may be extracted from them[3]; and British subjects, including bodies politic or corporate, being owners or proprietors of any mine or mines within England, Wales, or the town of Berwick-upon-Tweed in which any ore is or may be discovered, opened, found or wrought, and in which there is copper, tin, iron or lead, may hold, enjoy and possess those mines and ore, and dig and work the same, notwithstanding that they are pretended or claimed to be royal mines, notwithstanding any law, usage or custom to the contrary[4].

However, the above provisions do not extend to mines worked primarily for gold, where the ore contains such a slight admixture of the baser metals as to be valueless in itself for purposes of working[5].

1 Before that year the right of the Crown at common law extended to all mines of baser metal which contained any gold or silver, irrespective of the proportionate value of the ores: *Case of Mines* (1567) 1 Plowd 310 at 310, 315, 336, 339, Ex Ch; Bac Abr, Prerogative, B 8.

2 See PARA 218 ante.

3 Royal Mines Act 1688 s 3 (amended by the Statute Law Revision Act 1948 Sch 1).

4 Royal Mines Act 1693 s 1.

5 *A-G v Morgan* [1891] 1 Ch 432, CA. A licence from the Crown is required in these cases: *A-G v Morgan* supra.

220. Saving for the stannaries.

The provisions relating to royal mines[1] do not alter, determine or make void the charters granted to the tinners of Devon and Cornwall by the Crown, or any of their liberties, privileges or franchises, or the laws, customs or constitutions of the stannaries of Devon or Cornwall[2].

1 See PARAS 218-219 ante.

2 See the Royal Mines Act 1693 s 3. As to the stannaries of Devon and Cornwall see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 588-592.

221. Digging for saltpetre.

By prerogative right the Crown is entitled to dig for saltpetre in the land of a subject[1]; but this right, being allowed to the Crown originally for the defence of the realm in connection with the making of gunpowder, cannot be granted away, demised or transferred[2].

The right is also subject to certain rules for the protection of the owner of the soil. Thus, the Crown may not dig in a man's house, barn or outhouse, or so as to weaken the walls, and the soil must be left as commodious as it was before; nor can the Crown restrain the owner of the soil from digging for saltpetre himself[3].

1 *King's Prerogative in Saltpetre* (1606) 12 Co Rep 12.

2 *King's Prerogative in Saltpetre* (1606) 12 Co Rep 12 at 13.

3 *King's Prerogative in Saltpetre* (1606) 12 Co Rep 12 at 13-14.

222. Petroleum and natural gas.

The property in petroleum, including any mineral oil, relative hydrocarbon or natural gas existing in its natural condition in strata in Great Britain[1] is vested in the Crown, which has the exclusive right of searching and boring for and getting the same[2].

1 For the meaning of 'Great Britain' see PARA 207 note 8 ante. As to minerals in the sea bed see the Continental Shelf Act 1964 s 1 (as amended); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARAS 1634, 1636, 1639; MINES, MINERALS AND QUARRIES.

2 See the Petroleum (Production) Act 1934 s 1 (as amended); and FUEL AND ENERGY. As to the ownership of coal see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 22. As to the power to search for and acquire compulsorily substances which may be used in the production of atomic energy see the Atomic Energy Act 1946 ss 6-9 (s 7 as amended); and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1425 et seq.

223. Mines under the foreshore.

As general owner of the foreshore, except in Cornwall[1], the Crown enjoys the right to mines under it unless they have been granted away or otherwise alienated[2]. This right extends in Scotland to all mines underlying the waters of the ocean, whether within the narrow seas or from the coast outward to the territorial limit[3], and the same principle would, it seems, apply elsewhere in Great Britain[4]. Its operation is now further extended by statute beyond territorial waters[5].

In so far as it does not interfere with public rights of navigation or other public rights, the right to work these mines may be granted by the Crown[6].

1 In Cornwall the foreshore belongs, prima facie, to the Duke of Cornwall: see PARA 247 post. As to the division of mining rights under the foreshore between the Crown and the Duke of Cornwall see PARA 268 post. As to rights of access to mines below low water mark in Cornwall see PARA 269 post.

2 As to the Crown's right to the foreshore generally see PARA 242 post; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 25; WATER AND WATERWAYS vol 100 (2009) PARA 32. In Lancashire the foreshore belongs to the monarch in right of the Duchy of Lancaster: see PARA 246 post.

The management of mines under the foreshore did not pass to the Board of Trade on the transfer by the Crown Lands Act 1866 s 7 (repealed): see s 21 (repealed). As to the transfer of management of the foreshore see PARA 279 post. As to when coal mines under the foreshore passed under a grant of coal mines see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 860.

3 *Lord Advocate v Wemyss* [1900] AC 48 at 66, HL, per Lord Watson.

4 See the statutory provisions relating to mines under the foreshore in Cornwall discussed in paras 268-269 post. For the meaning of 'Great Britain' see PARA 207 note 8 ante.

5 See the Continental Shelf Act 1964 s 1(1); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 26. As to territorial waters see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 121 et seq.

6 *Lord Advocate v Wemyss* [1900] AC 48, HL. The power to grant the soil itself seems doubtful: *Lord Advocate v Wemyss* supra.

The meaning of 'mines and minerals' granted under foreshore must be taken from the normal rules of construction at the time of the grant: see *Lonsdale (Earl) v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887 (a grant of mines and minerals did not include natural gas where at the time of the grant in 1880 that would have been considered a dangerous nuisance substance rather than a source of profit).

224. Rights of access to mines etc in or under the foreshore.

All persons entitled in right of or under the Crown to or to the management of any beds, seams, veins, mines or quarries in or under the foreshore, or in or under any land immediately adjacent to it, and the respective tenants of that land, are empowered to take into possession, use or pass through, over or under any portion of the foreshore the management of which was transferred to the Crown Estate Commissioners[1], to do certain specified acts, subject to certain provision as to notice and compensation for damage, and for the preservation of piers or other structures on or near the foreshore and the safety and accommodation of the public[2].

1 Ie by the Coast Protection Act 1949 ss 37, 38 (both repealed): see PARA 279 post. As to the Crown Estate Commissioners see PARA 280 et seq post.

2 See the Crown Lands Act 1866 ss 22-24 (repealed). The repeal of these provisions does not affect powers or obligations under any lease granted before 27 July 1961: see the Crown Estate Act 1961 s 9(3), Sch 2 Pt II para 4(3). So far as coast protection works executed by a coast protection authority under the Coast Protection Act 1949 interfere with access to a mine under the foreshore, compensation will be payable to the owner: see s 19(1)(a); and WATER AND WATERWAYS vol 101 (2009) PARA 530.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/2. CASUAL REVENUES/(2) MINERALS/225. Extent of mining rights in assessionable manors.

225. Extent of mining rights in assessionable manors.

There were in Cornwall 17 assessionable manors originally belonging to the Duchy of Cornwall. In those manors certain tenements (known as 'conventionary tenements') were held by way of leases which were perpetually renewable every seven years at the Assession Court[1], and therefore were in many ways similar to copyhold[2]. Because they were in law leases[3] the custom that possession of the minerals was in the tenant did not apply and therefore the Duke of Cornwall and his licensees were entitled to get the minerals without the consent of the tenant. Six of the manors[4] were sold for the redemption of land tax reserving mines and metallic minerals[5].

The so-called Assessionable Manors Act[6] was passed to enfranchise the conventionary tenements and to lay down a code for the working of minerals. The code provides different rules for the sold manors (mines and metallic minerals) and the unsold ones[7] (mines, minerals, stone and substrata)[8]. Commissioners were appointed to make awards under the Act; and their award is a record of title and establishes the extent of the duchy mineral rights within those manors.

1 See *Rowe v Brenton* (1828) 8 B & C 737.

2 As to copyhold see CUSTOM AND USAGE; REAL PROPERTY.

3 *Rowe v Brenton* (1828) 8 B & C 737; *Crease v Barrett* (1835) 1 Cr M & R 919 at 922.

4 Ie Tewington, Tybesta, Moresk, Tywamhail, Helston-in-Kerrier and Calstock.

5 See the Duchy of Cornwall (No 2) Act 1844, preamble (repealed).

6 Ie the Duchy of Cornwall (No 2) Act 1844: see *A-G to Prince of Wales v Collom* [1916] 2 KB 193.

7 Ie Helston-in-Trigg, Penmayne, Tintagel, Restormel, Penlyne, Penkneth, Talskedy, Liskeard, Rillaton, Stoke Climsland and Trematon.

8 See the Duchy of Cornwall (No 2) Act 1844 ss 53, 54.

226. Right to search for and work mines in assessionable manors.

Subject to certain restrictions as to parks, pleasure grounds and dwelling houses and their curtilages[1], and to provisions as to compensation[2], notice[3] and security for damage[4], the Duke of Cornwall and his lessees, and all persons authorised by him, and his or their agents and workmen, may enter on all land comprised in any of certain assessionable manors[5] in which any mines, minerals, stone or substrata belong to the duke, and search, dig for, open and work the mines and get, carry away and dispose of the minerals, stone or substrata, and, in so far as is necessary or convenient for working those mines and getting, washing, dressing, rendering merchantable, carrying away and disposing of the minerals, stone or substrata, may erect buildings, steam and other engines, machinery and things, sink and make pits, shafts, levels, adits, air holes, tram and other roads and other works, take stone, lime and slate for those buildings and works, take, use and divert water, take and use room for ore and rubbish and other things, and do other acts and things upon, under, in and about the land[6]. Although the surface owner is compelled to permit his land to bear these burdens and to be used for these purposes, he is not divested of his title in favour of the duke[7].

1 See the Duchy of Cornwall (No 2) Act 1844 s 70.

2 See ibid ss 55-59, 62-69 (s 59 amended by the Mental Treatment Act 1930 s 20(5); the Duchy of Cornwall (No 2) Act 1844 s 65 amended by the Supreme Court of Judicature (Consolidation) Act 1925 s 224(1)).

3 See the Duchy of Cornwall (No 2) Act 1844 s 60.

4 See ibid s 61.

5 See PARA 225 notes 4, 7 ante.

6 Duchy of Cornwall (No 2) Act 1844 s 55.

7 *A-G to Prince of Wales v Collom* [1916] 2 KB 193 at 202.

(3) WILD ANIMALS

227. Abrogation of medieval forest law.

The medieval forest law[1], which although for the most part obsolete remained theoretically in force in three forests[2] until 1971, has been abrogated[3] except in so far as it relates to the appointment and functions of verderers[4]. At the same time any prerogative right to wild creatures, except royal fish and swans[5], has been abolished, together with any prerogative right to set aside land or water for the breeding, support or taking of wild creatures[6]. Franchises of forest, free chase, park or free warren are also abolished[7].

1 For the old law see Manwood *Forest Laws* (1598 Edn); Selden Society Publications vol 13, Select Pleas of the Forest; 1 Holdsworth's History of English Law pp 94-108; Lewis on Forests and Forest Laws. The forestal rights of the Crown consisted essentially of the monarch's right to use land (called a forest), whether belonging to himself or another, for hunting and for preserving game and preserving the land in such a way as to give maximum shelter and free room for the game: *Second Report on Statute Law Revision 1970* (Law Com no 28) (1970) PARA 4. In the early middle ages there was a special and rather oppressive body of law called forest law which applied to royal forests and was designed to protect these rights; it was enforced by a special organisation with special officers and special courts: para 4. The early medieval system is now obsolete: para 6. The forest organisation was in decay in the sixteenth century and has not played even a formal part since the seventeenth: para 6. The only surviving feature is the existence of the verderers of the New Forest and the Forest of Dean, and the Crown has long ceased to enforce its prerogative in relation to game: para 6. Moreover it has for a long time been generally accepted that the sporting rights over any land belong to the owner of the land: para 6. See FORESTRY vol 52 (2009) PARA 1 et seq.

2 Owing to progressive disafforestation by statute or otherwise the only surviving forests subject to the forest law were Windsor Forest, the New Forest and the Forest of Dean: *Second Report on Statute Law Revision 1970* (Law Com no 28) (1970) PARA 15. Only in the last two did any active administration of the forest law survive. Epping Forest, which had ceased to be subject to the forest law and its control, including the appointment of verderers, is governed by the Epping Forest Disafforestation Act 1878 s 30, Sch 4 (both as amended); and the Epping Forest Act 1880 s 9.

3 See the Wild Creatures and Forest Laws Act 1971 s 1(2); and FORESTRY vol 52 (2009) PARA 1.

4 See ibid s 1(2); and FORESTRY vol 52 (2009) PARA 1. The verderers were forest officers charged with the holding of courts dealing with forest offences. The derivation in Manwood *Forest Laws* (5th Edn) p 348 is 'viridarius a' viridi', ie 'vert', a term that included in general every tree, underwood, bush and the like growing in a forest and having great leaves which may cover or feed the deer.

In the New Forest the constitution of the verderers is now regulated by statute. They are required to hold courts for the dispatch of administrative and judicial business (see the New Forest Act 1877 s 24 (as amended)) and they may abate inclosures etc and fine offenders (see s 23 (as amended)). A court for the dispatch of judicial business consists of the official verderer together with such four of the other verderers as may be nominated by the Lord Chancellor, of whom not less than three are to be elective verderers: New Forest Act 1949 s 8(1). A court may be summoned by a written requisition by any three verderers or the official verderer: see the New Forest Act 1877 s 24 (as amended). Three verderers present normally constitute a quorum: see s 24 (as amended); and the New Forest Act 1949 s 8(2). The official verderer is chairman but in his absence the verderers can choose a chairman: see the New Forest Act 1877 s 24 (as amended). Questions are decided by a majority of votes, and, in the case of administrative business, the chairman has a casting vote: see s 24 (as amended). As to procedure, appeals, etc see ss 33-37.

In relation to the Forest of Dean, the election of verderers is required by statute, but the mode of election is regulated by custom: see the Wild Creatures and Forest Laws Act 1971 s 1(6). See also *Second Report on Statute Law Revision 1970* (Law Com no 28) (1970) PARA 22.

As to byelaws with respect to the New Forest and the Forest of Dean and the verderers' powers to enforce them see the Forestry Act 1967 s 46 (as amended), s 47; and FORESTRY vol 52 (2009) PARAS 7, 41.

5 See PARAS 228-230 post.

6 See the Wild Creatures and Forest Laws Act 1971 s 1(1)(a). The abolition was intended to serve as a foundation for the repeal of a large number of enactments going back to the reign of Edward I: s 1(4), Schedule. In fact, as substantially all the law that still operated was preserved by the Act, it would seem that the sole object was to clean up the statute book: *Second Report on Statute Law Revision 1970* (Law Com no 28) (1970) App 2 para 2.

7 See the Wild Creatures and Forest Laws Act 1971 s 1(1)(b). By virtue of their prerogative right the Norman and Angevin kings had granted certain franchises of preserving and hunting game on the grantee's own or another's land which were known as franchises of forest or free chase in the case of beasts of the forest or of chase on uninclosed land, and franchises of free warren in the case of beasts and fowls of warren: *Second Report on Statute Law Revision 1970* (Law Com no 28) (1970) PARA 5. There was also a franchise of park which consisted of the right to preserve and hunt beasts of the forest and of chase on the grantee's own inclosed land; and for this a royal grant may at first have been needed only in the neighbourhood of royal forests: para 5. The right to depute or appoint gamekeepers enjoyed by purchasers of forestal or other rights from the Duchy of Lancaster under 1 & 2 Geo 4 c 52 (Land Revenues of the Crown) (1821) s 13 (repealed) is preserved: see the Wild Creatures and Forest Laws Act 1971 s 1(7).

228. Right of fishing.

By immemorial usage the Crown may have an exclusive right of fishing in a creek or arm of the sea or in any part of a navigable river[1]. This right may be claimed by a subject by prescription, which presupposes a prior grant by the Crown[2]. The Crown may have a several fishery[3] in spite of the prima facie right of the public to fish in the sea and in all creeks and navigable rivers and to take fish on the foreshore between high and low water mark, on the supposition that the inhabitants of a particular district might relinquish the right in return for others equally or more beneficial[4]. Where such an exclusive right exists it may form the subject of a valid grant by the Crown[5].

1 Hale's de Jure Maris (Hargrave's Law Tracts 11, 20). See note 5 infra. See also *Vivian v Blake* (1809) 11 East 263; *Richardson v Orford Corpn* (1793) 1 Anst 231; *A-G for British Columbia v A-G for Canada* [1914] AC 153 at 168-171, PC. Mussel beds or scalps on the foreshore or estuary of a navigable river in Scotland belong to the Crown, and may be granted or leased to a subject: *Parker v Lord Advocate* [1904] AC 364, HL.

2 *Richardson v Orford Corpn* (1793) 1 Anst 231; Hale's de Jure Maris (Hargrave's Law Tracts 17, 18, 20). See also *Bagott v Orr* (1801) 2 Bos & P 472; *Rogers v Allen* (1808) 1 Camp 309. The right of fishing in the sea cannot be annexed to land (*Ward v Creswell* (1741) Willes 265), but an exclusive right of fishing in a navigable river may be appurtenant to a manor (*Rogers v Allen* supra).

3 As to several fisheries see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 805.

4 Hale's de Jure Maris (Hargrave's Law Tracts 17). As to the prima facie right of the public to fish in the sea and navigable rivers see the cases cited in notes 1-2 supra; and *Carter v Murcot* (1768) 4 Burr 2162. As to the right of the public to take fish on the foreshore see *Bagott v Orr* (1801) 2 Bos & P 472; *Warren v Matthews* (1703) 6 Mod Rep 73. As to public rights of fishing generally see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 797; WATER AND WATERWAYS.

5 See *Parker v Lord Advocate* [1904] AC 364, HL. The Crown was restrained by Magna Carta from making fresh grants affecting public privileges, but where the Crown had previously excluded the public such exclusive rights as it acquired might afterwards be lawfully granted out: *Malcomson v O'Dea* (1863) 10 HL Cas 593. It has sometimes been suggested that a several fishery is a franchise, a royal privilege in the hands of the subject granted out of the prerogative of the Crown (see *Duke of Devonshire v Pattinson* (1887) 20 QBD 263 at 271-272, CA; *Ecroyd v Coulthard* [1898] 2 Ch 358 at 370, CA); however, a fishery that reverts to the Crown does not merge in the prerogative, but may be regranted by the Crown, which would not be the case had it been a franchise granted out of the prerogative (*Duke of Northumberland v Houghton* (1870) LR 5 Exch 127; *Duke of Devonshire v Neill* (1877) 2 LR Ir 132). See also the cases cited in para 229 note 2 post. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 868; AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

229. Royal fish.

Although the Crown has the sovereign dominion and jurisdiction over the sea which encompasses the British Islands and over all creeks and arms of the sea and navigable rivers[1], it has no general property in the fish in them[2], except whales and sturgeon. Except in such places as are privileged by grant or otherwise whales and sturgeon are royal fish and belong to the Crown[3] if taken in the seas forming parcel of the Crown's dominions; if taken in the wide seas they belong to the taker according to the rules and customs observed in the locality[4].

The rights to royal fish may also be claimed as a franchise by a subject either by grant or prescription, and either in gross or as appurtenant to an honour, manor or hundred[5].

1 See Hale's de Jure Maris (Hargrave's Law Tracts 10); Bac Abr, Prerogative, B 3; *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 108b.

2 The right of fishing did not grow originally out of the prerogative but arose as a proprietary right from the ownership of the soil: see *Duke of Devonshire v Pattinson* (1887) 20 QBD 263 at 271, CA, per Fry LJ; *A-G for British Columbia v A-G for Canada* [1914] AC 153, PC. Any prerogative right to wild creatures (except royal fish and swans) and to set aside land or water for the breeding, support or taking of wild creatures has been abolished: see the Wild Creatures and Forest Laws Act 1971 s 1(1)(a); and PARA 227 text and note 6 ante. As to swans see PARA 230 post.

3 Statute Prerogative Regis (temp incert) c 13. See also *Case of Swans* (1592) 7 Co Rep 15b at 16a. The right extends to 'sturgeon and grampuses, or great fishes': see Hale's de Jure Maris (Hargrave's Law Tracts 43). As to the right of the Queen Consort to the tail portion see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 29. See also Stuart Moore *History and Law of Foreshore* pp 81-82. For the procedure for recovery of royal fish by the Crown see Robertson *Civil Proceedings by and against the Crown* p 512.

4 Bac Abr, Prerogative, B 5; *Aberdeen Arctic Co v Sutter* (1862) 6 LT 229, HL. In the absence of special custom an action of trespass will not lie for disturbance of fishing operations: *Young v Hichens* (1844) 6 QB 606.

5 Hale's de Jure Maris (Hargrave's Law Tracts 43).

230. Swans.

Provided they are wild and unmarked, the property in all white swans swimming in open and common rivers belongs to the Crown by prerogative right[1].

However, the property in swans in a certain river may be claimed by a subject by grant or prescription[2], or when they are tame[3], or by the grant of a swan mark from the Crown; if so marked they belong to the owner of the mark wherever they may fly[4].

It seems that by custom the cygnets belong equally between the owner of the cock and the owner of the hen swan[5].

1 *Case of Swans* (1592) 7 Co Rep 15b at 16a. However, a subject may have property in unmarked white swans in his manor or private waters; if they escape he may bring them back again, but if they gain their natural liberty the monarch's officers may seize them: *Case of Swans* supra at 17. As to the abolition of any prerogative right to wild creatures except royal fish and swans see the Wild Creatures and Forest Laws Act 1971 s 1(1)(a); and PARAS 227, 229 note 2 ante.

2 *Case of Swans* (1592) 7 Co Rep 15b at 18b.

3 *Case of Swans* (1592) 7 Co Rep 15b at 17b. If they escape from his land or private waters the subject may bring them back again, but if they gain their natural liberty the monarch's officers may seize them: see *Case of Swans* supra at 17b; and note 1 supra.

4 *Case of Swans* (1592) 7 Co Rep 15b at 17a. The requirement of a property qualification for the owner of a swan mark (see 22 Edw 4 c 6 (An Act for Swans) (1482)) was repealed by the Game Act 1831 s 1 (repealed).

5 *Case of Swans* (1592) 7 Co Rep 15b. 'For the cock swan holdeth himself to one female and is the emblem of an affectionate and true husband to his wife above all other fowls': *Case of Swans* supra at 17b.

UPDATE

230 Swans

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

(4) ESCHEAT AND BONA VACANTIA

231. In general.

Escheat and bona vacantia are now seen as two aspects of the vesting in the Crown of property which has no owner. In the case of real property this may be seen as an example of the Crown's radical title[1] and in the case of personal property as a case of ultimus haeres[2]. The justification for the vesting of such property in the Crown is that there must be someone in whom property is vested. The vesting of such property in the Crown does not of itself impose duties[3].

The origins of escheat and bona vacantia are distinct and so different Crown authorities are responsible for administration[4].

1 As to the radical title see *Mabo v Queensland* (No 2) (1992) 107 ALR 1, Aust HC; and PARA 215 ante.

2 Literally, 'last heir', where the Crown takes because there is no heir.

3 As to liability for escheated land see PARA 234 post; and as to liability for bona vacantia land see PARA 236 post.

4 See PARA 232 post.

232. The relevant Crown authority.

Escheat[1] passes to the chief lord and therefore (in the absence of a mesne lord) escheated realty passes to the Crown[2]. Such escheated realty falls to the management of the Crown Estate Commissioners[3] save in the counties of Lancaster and Cornwall where it passes to the duchies[4]. It is received as capital and is therefore subject to the provisions of the Crown Estate Act, the Duchy of Lancaster Acts or the Duchy of Cornwall Management Acts, as the case may be.

Bona vacantia[5] is part of the casual revenues of the Crown[6] and passes under the jurisdiction of the Treasury Solicitor[7]. Any necessary grant of letters of administration will be issued out of the probate court to the Treasury Solicitor and will extend to all the property which is capable of passing on a grant[8]. If the deceased died resident[9] in Lancashire or Cornwall then the estate falls to be administered by, and the grant will be issued to, the solicitor to the duchy[10].

In the case of a dissolved company the normal practice is for the property to be taken as bona vacantia by the authority responsible for the area of the registered office so that if that was in Lancashire or Cornwall at the time of dissolution then the company's assets will be administered by the duchy, but otherwise they will be administered by the Treasury Solicitor[11]. If the freehold land of a dissolved company is disclaimed it will pass on escheat to the authority having jurisdiction for the locality[12].

1 As to escheat see PARA 233 et seq post.

2 As to the Crown as chief lord see PARA 215 ante. It appears that escheat is automatic on the determination of the fee (*Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793), but it is possible that it arises only on entry and therefore does not fall to Crown management unless the Crown takes entry.

3 As to the Crown Estate Commissioners see PARA 280 et seq post.

4 The original grants of the royal duchies may have carried with them right to escheat in manors and honours granted wherever they were. It is now accepted that escheat passes according to the county in which the duchy has prerogative rights. The boundaries of Lancashire for this purpose are those of the former county before the coming into force of the Local Government Act 1974. As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARAS 318-353 post.

5 As to bona vacantia see PARA 235 et seq post.

6 As to the casual revenues of the Crown see PARA 216 ante.

7 As to the Treasury Solicitor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 541.

8 The Treasury Solicitor is a corporation sole and a grant to one holder of the office automatically passes to a successor: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 541. As to the grant of letters of administration see EXECUTORS AND ADMINISTRATORS. In a case where the deceased left a will but there is a total or partial intestacy the will may be proved by a surviving executor who will administer the assets undisposed of and account to the relevant authority.

9 As between counties similar rules are applied as for domicile under private international law. As to domicile see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 35 et seq.

10 The solicitor to the Duchy of Lancaster, like the Treasury Solicitor (see note 8 supra), is a corporation sole and a grant to one holder of the office automatically passes to a successor: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 542. The solicitor to the Duchy of Cornwall, however, is not a corporation sole, so on a change of duchy solicitor a fresh grant is made of any estates not completely administered. As to the solicitor to the Duchy of Cornwall see PARA 323 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue)

PARA 540. Where a grant is not necessary because the estate is too small (which is very commonly the case) the solicitor who would have taken out a grant will normally administer the estate.

11 This is a matter of practice, and in occasional cases land may be administered by the authority having jurisdiction in that area if this is more convenient. As to company bona vacantia see PARA 238 post; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933 et seq.

12 As to escheat arising on disclaimer see PARA 233 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

233. Escheat.

Escheat is part of the seigniorial revenues of the Crown[1] and can apply to other lords of freehold land, known as mesne lords. Escheat is the capacity of the chief lord to resume land granted by him or a predecessor in title on determination of the estate granted[2]. It may now arise on disclaimer[3]. This may be by a trustee in bankruptcy[4] or a liquidator[5] or the Treasury Solicitor[6]. As there are now few known or recognised mesne lords the normal effect of escheat is a passing of title to the Crown. In Lancashire and Cornwall it would pass to the respective duchies[7] and elsewhere it would pass under the management of the Crown Estate Commissioners[8] if they chose to assert title. In the case of escheat to a mesne lord the land escheated becomes once again parcel of the manor out of which it was granted[9] and therefore where land was originally granted by the Crown out of a manor or honour it will be held ut de honore[10].

Where land escheats to the monarch in right of the Crown or of the Duchy of Lancaster or to the Duke of Cornwall or the monarch in right of that duchy then the land vests accordingly and may be dealt with, and any proceedings may be taken in relation to it, without the title by escheat being found of record by inquisition or otherwise[11].

1 See PARA 204 ante.

2 See REAL PROPERTY vol 39(2) (Reissue) PARAS 6, 254.

3 As to disclaimer see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY. A frequent use of disclaimer is by a trustee in bankruptcy or liquidator to relieve the insolvent estate of onerous property: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY. Escheat propter delictum tenentis (ie on conviction of felony) has now been abolished: see the Forfeiture Act 1870 s 1 (repealed). Escheat propter defectum sanguinis (ie for want of heirs) has been abolished as regards estates of persons dying after 1925: see the Administration of Estates Act 1925 s 45(1)(d). As to forfeiture see REAL PROPERTY vol 39(2) (Reissue) PARA 253; SENTENCING AND DISPOSITION OF OFFENDERS vol 97 (2010) PARA 480 et seq.

4 See the Insolvency Act 1986 s 315 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 472 et seq.

5 See ibid s 178; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 866 et seq.

6 See the Companies Act 1985 s 656; para 238 post; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 935. In the case of freehold land passing as bona vacantia to the Duchies, disclaimer is by the solicitor to the duchy. As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARAS 318-353 post.

7 The effect of disclaimer by the Treasury Solicitor of bona vacantia land outside Lancashire and Cornwall is to transfer it to the Crown Estate, a shifting of responsibilities within the Crown. If the solicitor of the Duchy of Lancaster or the solicitor of the Duchy of Cornwall disclaims land within the relevant county, the only effect is to transfer revenue as bona vacantia to capital as part of the duchy possessions. If land within the jurisdiction of one authority lying in the area of another is disclaimed, responsibility will shift.

8 As to the Crown Estate Commissioners see PARA 280 et seq post.

9 *Delacherois v Delacherois* (1864) 11 HL Cas 62, where the decision was that as the mesne lord had purchased the land by act of parties it became held of the chief lord but it was accepted that if it had come in by operation of law then in a similar way to escheating copyhold the land would again become parcel of the manor.

10 As to land held ut de honore see PARA 215 ante.

11 Crown Estate Act 1961 s 8(3). It seems that title to escheated land may now be established by the courts in the exercise of their normal jurisdiction.

234. Liability for escheated land.

The Crown does not accept responsibility for land passing to it automatically by escheat unless the Crown enters on and manages it[1].

Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or intentions of the Crown, the Crown is not by virtue of the Crown Proceedings Act 1947[2] subject to any liabilities in tort by reason only of the property being so vested; but the Crown may be liable after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation of it[3].

If a liability such as a mortgage or rentcharge is secured on property the liability is not extinguished by reason of the asset passing to the Crown but the Crown cannot be bound to discharge the liability[4].

1 *Re Mercer and Moore* (1880) 14 ChD 287; *Re the Nottingham General Cemetary Co* [1955] 1 Ch 683; *A-G v Parsons* [1956] AC 421; *Hackney London Borough Council v Crown Estate Comrs* (1995) 72 P & CR 233; *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793. See also 2 Bl Com (14th Edn) 245; and Sugden *Vendors and Purchasers of Estates* (14th Edn) p 575. As to the need for entry by the Crown see Warton's Law Lexicon (1876).

Both the Insolvency Act 1986 ss 180, 319 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 483; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 880) and the Companies Act 1985 s 658 (as amended) (see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933) make it clear that the Crown is not liable to pay a rentcharge on disclaimed land unless the Crown or some person claiming under or through the Crown has taken possession or control of the land or has entered into occupation of it.

As to how far covenants and stipulations in leaseholds are binding as regards the Crown after escheat see Co Litt 215a; Shep Touch 150.

As to Crown liability for bona vacantia land see PARA 236 post.

2 As to Crown proceedings generally see CROWN PROCEEDINGS AND CROWN PRACTICE.

3 See the Crown Proceedings Act 1947 s 40(4); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 383.

4 See *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793; *Hackney London Borough Council v Crown Estate Comrs* (1995) 72 P & CR 233; *Hindcastle Ltd v Barbara Attenborough Associates Ltd* [1997] AC 70, [1996] 1 All ER 737, HL. See also note 1 supra.

235. Meaning of 'bona vacantia'.

The term 'bona vacantia' is now applied[1] to (1) the residuary estate of persons dying wholly or partially intestate and without husband or wife or relatives within the statutory classes[2]; (2) property and rights of a dissolved company and certain other corporations[3]; (3) certain other interests including certain interests in trust property[4].

Originally the term applied only to personal property but it now includes freeholds. At one time it may not have included equitable interests (which passed to the legal owner) but it was subsequently extended to an equity of redemption of leaseholds[5].

The property in bona vacantia is vested in the Crown to prevent the strife and contention to which title by occupancy might otherwise give rise[6].

1 See Ing *Bona Vacantia*. Wreck (see PARA 270 et seq post), treasure trove (see PARA 373 post), waifs (see PARA 371 post), estrays (see PARA 372 post) and royal fish (see PARA 229 ante) also used to be classed as bona vacantia: 1 Bl Com (14th Edn) 298. However, that usage is not now accepted: see Chitty *Law of the Prerogatives of the Crown* p 136. It is also clear that bona vacantia does not include goods lost or designedly abandoned, the property in which is vested in the first finder and is good against all, except the true owner in the case of goods lost: 1 Bl Com (14th Edn) 298; and see eg *Armory v Delamirie* (1722) 1 Stra 505. See also BAILMENT vol 3(1) (2005 Reissue) PARAS 11-14.

2 See PARA 237 post.

3 See PARA 238 post; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 933, 1160. See also CORPORATIONS vol 9(2) (2006 Reissue) PARA 1304. The funds of a friendly society which has come to an end, and to which there are no persons beneficially entitled, belong to the Crown as bona vacantia (*Braithwaite v A-G* [1909] 1 Ch 510; and see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2262); and a similar rule, it seems, applies to the property of clubs (see CLUBS vol 13 (2009) PARA 293). The Treasury Solicitor represents the Crown where the Crown is or may be entitled to property as bona vacantia on the dissolution of a corporation, the determination of trusts or on a society ceasing to exist: *Practice Note* [1952] WN 170.

4 See PARA 239 post.

5 See *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA. Since 1925 such equitable interests have been able to subsist as legal estates: see the Law of Property Act 1925; and REAL PROPERTY.

6 1 Bl Com (14th Edn) 289. See also *Dyke v Walford* (1848) 5 Moo PCC 434. Bona vacantia was said originally to have belonged to the first occupant: see 1 Bl Com (14th Edn) 298; 3 Co Inst 132-133; 2 Co Inst 166.

236. Liability for bona vacantia land.

Unlike escheat[1] which destroys the fee simple so that the superior interest comes into possession, where the land passes as bona vacantia the legal estate remains in existence and vests in the Crown[2]. It is not clear whether obligations to which the legal estate was subject when it was held as a private interest can be enforced against the Crown[3].

Where the Crown has actively taken responsibility for property then it will be treated as having adopted the liabilities, but merely offering property for sale is not so regarded[4].

1 As to Crown liability for escheated land see PARA 234 ante.

2 See the Administration of Estates Act 1925 s 46(1)(vi); and the Companies Act 1985 s 654(1).

3 In *Toff v McDowell* (1993) 69 P & CR 535, 25 HLR 650, the freehold of a block of flats passed as bona vacantia, and a tenant claimed to enforce a covenant against the Treasury Solicitor. It was held that in the circumstances there would have been no breach even by a private landlord. It was conceded without argument that the Treasury Solicitor could in principle have been liable but the point remains open.

On general principles it would not seem appropriate for public money to be expended for the private benefit of covenantees.

4 *Toff v McDowell* (1993) 69 P & CR 535, 25 HLR 650.

237. Bona vacantia on intestacy.

In default of any person taking an absolute interest in the residuary estate of an intestate it belongs to the Crown or to the Duchy of Lancaster[1] or to the Duke of Cornwall[2] as bona vacantia[3] in lieu of escheat[4], but provision may be made for dependants of the intestate out of property so devolving and in accordance with the existing practice[5].

1 As to the Duchy of Lancaster see PARAS 300-317 post.

2 See PARA 318 et seq post.

3 The words 'bona vacantia' in the Administration of Estates Act 1925 s 46(1)(vi) are merely descriptive; the Crown takes directly by succession under that provision and not by any prerogative right to ownerless property under which, but for the statute, it would otherwise have taken: *Re Mitchell, Hatton v Jones* [1954] Ch 525, [1954] 2 All ER 246.

4 See the Administration of Estates Act 1925 s 46(1)(vi); and EXECUTORS AND ADMINISTRATORS. As to escheat see PARAS 233-234 ante.

5 See PARA 240 post; and EXECUTORS AND ADMINISTRATORS.

238. Company bona vacantia.

When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) are deemed to be bona vacantia[1].

If the company is revived[2] all such property and rights revest but if the bona vacantia authority has disposed of the property or an interest in it then the revival of the company does not affect the disposition but the company has a claim for an amount equal to the amount of the consideration or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property, right or interest disposed of as at the date of the disposition[3].

1 See the Companies Act 1985 s 654; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933. As to escheat arising on disclaimer see PARA 233 ante; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANY AND PARTNERSHIP INSOLVENCY.

2 Ie under ibid s 651 (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933.

3 See ibid s 655; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 934.

239. Bona vacantia and trusts.

Property held in trust may pass as bona vacantia. This may apply to a simple trust interest[1]. It is common for a partial intestacy to arise and, if so, the residue or part of it may pass as bona vacantia[2]. A common example of property passing on failure of a trust is where a club is dissolved[3]. Where a company holds property on trust the property does not pass as bona vacantia if the company is dissolved[4]. Where property is held on charitable trusts and there is a general charitable intention new trustees may be appointed[5]. However, contributions to a fund which is not charitable, such as a disaster appeal fund, may pass as bona vacantia where no resulting trust to donors is implied, as in the case of anonymous contributions in a street collecting box[6].

1 *Middleton v Spicer* (1783) 1 Bro CC 201; *Taylor v Haygarth* (1844) 14 Sim 8; *Powell v Merrett* (1853) 1 Sm & G 381; *Colchester v Law* (1873) LR 16 Eq 253; *Cunnack v Edwards* [1896] 2 Ch 679; *Braithwaite v A-G* [1909] 1 Ch 510.

2 A common situation is for one spouse to die leaving the whole estate to a survivor and for the survivor to die intestate and without kin while the first estate is still unadministered. In such a case it may be necessary for the administering authority to take out grants to both estates.

3 See eg *Re Brighton Cycling and Angling Club Trusts* (1956) Times, 7 March.

4 See the Companies Act 1985 s 654(1); para 238 ante; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933. As to the appointment of new trustees see TRUSTS vol 48 (2007 Reissue) PARA 818 et seq.

5 See CHARITIES vol 8 (2010) PARA 177 et seq.

6 *Re West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts* [1971] Ch 1, [1970] 1 All ER 544. Compare *Re Gillingham Bus Disaster Fund* [1958] Ch 300.

240. Bona vacantia and ex gratia payments.

In the case of bona vacantia arising on intestacy[1] there is a statutory power for the administering authority to make an ex gratia grant[2]. There is no corresponding express statutory power in the case of companies, although payments may be made under the common law[3].

If a distribution is made out of the estate of an individual and a relative (or indeed a will) subsequently appears, such a distribution will not, it seems, defeat the claim of a lawful beneficiary[4].

Similarly, where payment is made out of a dissolved company's assets[5] the authority is at risk if the company is revived and claims its assets[6]. A revived company may claim only the proceeds of sale if an asset has been sold, but there is no protection if the asset has been given away[7]. Accordingly requests for ex gratia payments are considered, subject to general policy guidelines, on a case by case basis and an indemnity may be requested from the recipient[8].

1 As to bona vacantia arising on intestacy see PARA 237 ante; and EXECUTORS AND ADMINISTRATORS.

2 See the Administration of Estates Act 1925 s 46(1)(vi); and EXECUTORS AND ADMINISTRATORS.

3 As to company bona vacantia see PARA 238 ante; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933 et seq.

4 As to distribution by a personal representative see the Administration of Estates Act 1925 s 33 (as amended); and EXECUTORS AND ADMINISTRATORS.

5 Eg a small cash balance in an overlooked bank account may be paid to the shareholders.

6 As to the effect of the revival of a company on bona vacantia see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 934.

7 See the Companies Act 1985 s 655; para 238 ante; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 934.

8 Where an ex gratia payment out of a company's assets is not appropriate, the company may be revived or the asset sold to the claimant. If the assets are above a minimum value (which is kept under review) the Crown authority will normally decline to distribute the assets to shareholders and recommend that they revive the company. If there are substantial liabilities that have not been met, the authority will normally decline to act, although if the debt is owed to the Crown (for example to the Inland Revenue), it may be possible to make arrangements so that the shareholders do not profit.

241. Sale of Crown's interest in an estate.

Where the Crown has an interest in the estate of a person dying after 1925 the court may, on the appropriate application being made, order a sale or other transaction to be carried out as it thinks requisite to give effect to the Crown's rights, and may make a vesting order in favour of the Crown or appoint a person to convey[1].

1 See the Administration of Estates Act 1925 ss 38(2)(a), (d), 57(1). As regards deaths before 1926, the court had power to order the sale of a hereditament, estate or interest on the application or with the consent of the Attorney General, where in proceedings in the High Court it appeared to the court that the Crown was entitled: see the Intestates Estates Act 1884 s 5(1) (repealed in so far as it applies to any death after 1925). See also *Re Pratt's Trusts* (1886) 55 LT 313. As to the Crown's rights to the residuary estate of persons dying intestate after 1925 see the Administration of Estates Act 1925 s 46(1)(vi); para 237 ante; and EXECUTORS AND ADMINISTRATORS.

3. FORESHORE AND WRECK

(1) FORESHORE

242. Foreshore.

By prerogative right the Crown is prima facie the owner of all land covered by the narrow seas adjoining the coast, or by arms of the sea or public navigable rivers[1], and also of the foreshore, or land between high and low water mark[2], the right being limited landwards to the medium line of high tide between spring and neap tides[3]. There is a presumption of ownership in favour of the Crown, and the burden of proof to the contrary is on a claimant[4].

By reason of its ownership of land covered by the narrow seas or by arms of the sea, the Crown is also owner of any islands arising in it de novo[5]; but if the locus on which the island is has been granted to or belongs to a subject, the island is the property of the subject by reason of his grant or possession[6].

Any rights exercisable by the United Kingdom[7] outside territorial waters with respect to the seabed and subsoil and their natural resources (except coal) are vested by statute in the Crown[8].

1 Hale's de Jure Maris (Hargrave's Law Tracts 10); Bac Abr, Prerogative, B 3. See also *Bulstrode v Hall* (1663) 1 Sid 148. A 'navigable creek or arm of the sea' in the legal sense must be affected by the ebb and flow of ordinary tides: *Earl of Ilchester v Raishleigh* (1889) 61 LT 477.

2 Hale's de Jure Maris (Hargrave's Law Tracts 14); Bac Abr, Prerogative, B 3; *A-G v Emerson*[1891] AC 649, HL; *Malcomson v O'Dea* (1863) 10 HL Cas 593; *Gann v Free Fishers of Whitstable* (1865) 11 HL Cas 192; *Le Strange v Rowe* (1866) 4 F & F 1048; *Kirby and Prodger v Gibs* (1667) 2 Keb 294; *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 107a.

The prima facie presumption of the Crown's ownership of the foreshore is based on the fundamental principle of the law of property in land, that all the land in the realm belonged originally to the monarch (Hall on Seashore 4). The presumption that the terra firma (ie land above the high water mark) belongs to the monarch as never having been granted out can hardly arise, because there is overwhelming evidence that the greater part of such land has been granted out. Domesday Book itself is evidence of what land belonged to the Crown, and what to its subjects. However, as the evidence that the Crown has granted the foreshore is not so comprehensive, the presumption of Crown ownership of the foreshore still holds good, though of recent years it is of less weight than formerly. As to the origin and growth of this presumption see Stuart Moore *History and Law of Foreshore*. As to ownership of the foreshore see also WATER AND WATERWAYS vol 100 (2009) PARA 32.

It is noteworthy that the Statute Prerogative Regis (temp incert) c 13 is silent as to the Crown's ownership of the foreshore. In *Le Strange v Rowe* supra at 1052, Erle CJ said: 'In a great number of cases the Crown has parted with the foreshore. There are some manors that remain in the Crown that are the property of the Crown, but I take it that in the great majority of cases the right to the foreshore between high and low water mark is in the Lord of the Manor'. See also Hale's de Jure Maris c 4 (Hargrave's Law Tracts 13): 'Although it is true that such shore may [be] and commonly is parcel of the manor adjacent, and so may be belonging to a subject as shall be shown, yet prima facie it is the King's'. The prima facie presumption can scarcely apply to the land of the lords marchers in Wales, who obtained their land by grants of all land which they might acquire by conquest: *A-G v Phillips* (1857) cited in Stuart Moore *History and Law of Foreshore* p 510.

The management of the foreshore belonging to the Crown is, with certain exceptions, vested in the Crown Estate Commissioners: see the Crown Estate Act 1961 s 1; and WATER AND WATERWAYS vol 100 (2009) PARA 38. As to the Crown Estate Commissioners see PARA 280 et seq post. As to dealings with the foreshore by the Board of Trade when the board had management of the foreshore, and the board's dealings with the bed of the sea, see Stuart Moore *History and Law of Foreshore* p 597.

As to the extent of the foreshore or seashore see BOUNDARIES vol 4(1) (2002 Reissue) PARA 922; WATER AND WATERWAYS vol 100 (2009) PARA 34 et seq. As to meaning of 'low water mark' see *Anderson v Alnwick District Council*[1993] 3 All ER 613, DC.

3 *A-G v Chambers* (1854) 4 De GM & G 206; *Philpot v Bath* (1905) 21 TLR 634 at 636, CA. In Scotland the right to the soil extends, it seems, from the coast outwards to the territorial limit: *Lord Advocate v Wemyss*[1900] AC 48 at 66, HL, per Lord Watson.

4 *A-G v Richards* (1795) 2 Anst 603. The foreshore is best understood as part of the royal demesne, or rather waste: *A-G v Hanmer* (1858) 31 LTOS 379. As to the presumption of Crown ownership see also note 2 supra.

So much of the foreshore in the vicinity of ports and harbours has come into the hands of public authorities or private owners by grant or prescription that the Crown has little left as far as major ports are concerned. Elsewhere much of the foreshore, especially in the neighbourhood of the more popular resorts, is held and administered by local authorities under regulating leases from the Crown Estate Commissioners or the royal duchies. The National Trust also holds substantial lengths of foreshore either freehold or under lease. The seashore down to low water mark is now for all local government purposes annexed to and incorporated in the parish or parishes (or in Wales, the community or communities) which it adjoins in proportion to the extent of the common boundary: see the Local Government Act 1972 s 72(1); and WATER AND WATERWAYS vol 100 (2009) PARA 37.

5 Hale's de Jure Maris (Hargrave's Law Tracts 17). See also *Secretary of State for India v Chelikani Rama Rao* (1916) 85 LJPC 222, PC.

6 Hale's de Jure Maris (Hargrave's Law Tracts 36).

7 For the meaning of 'United Kingdom' see PARA 207 note 8 ante.

8 See the Continental Shelf Act 1964 s 1(1); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 26. See also FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636 . For the exercise of jurisdiction within territorial waters see *R v Keyn* (1876) 2 ExD 63, CCR; the Territorial Waters Jurisdiction Act 1878; the Territorial Sea Act 1987; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1054 et seq; INTERNATIONAL RELATIONS LAW.

UPDATE

242 Foreshore

NOTE 2--With regard to the land of the lords marchers in Wales, the presumption that foreshore is vested in the Crown is not rebutted by the shared entitlement of the bishop and the king to wreck: *Crown Estate Comrs v Roberts*[2008] EWHC 1302 (Ch), [2008] All ER (D) 175 (Jun).

243. Public rights.

While there is no general legal right of the public enforceable in court to have access to or use of the foreshore for recreation or other purposes[1], the right of the Crown and of any person holding a grant, whether from the Crown or from a subject, in the soil is subject to the public right of navigation and of fishing in the sea[2], and rights ancillary to it[3], as also to the right of owners of adjoining land to have access to the sea at all times for purposes of navigation[4].

Neither the Crown nor its grantee can use the foreshore so as to be a nuisance to the Crown's subjects[5], and a user which at the time of the grant was lawful becomes unlawful if it becomes by any circumstance a nuisance, unless it has been sanctioned by Parliament[6].

In relation to land beyond the jurisdiction of a local planning authority, the Crown Estate Commissioners exercise, by the grant of licences, a similar function to that of a planning authority[7].

1 Some foreshore has been registered as common land and therefore is subject to rights of commoners or to rights of access under the Law of Property Act 1925 s 193 (as amended): see COMMONS vol 13 (2009) PARA 581 et seq. Where foreshore is held by the National Trust then the public have rights subject to its byelaws. Where foreshore is held by a local authority there may be a public right, at least for local residents. Elsewhere access is by tolerance and grace: see *Alfred F Beckett Ltd v Lyons* [1967] Ch 449, [1967] 1 All ER 833, CA; and note 3 infra.

2 Hale's de Jure Maris (Hargrave's Law Tracts 10, 17); *A-G v Parmeter* (1811) 10 Price 378 (affd sub nom *Parmeter v A-G* (1813) 10 Price 412, HL).

3 *Brinckman v Matley* [1904] 2 Ch 313, CA; *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139 at 166-167 per Parker J (shooting rights). See also *Malcomson v O'Dea* (1863) 10 HL Cas 593; *A-G for British Columbia v A-G for Canada* [1914] AC 153.

As to ancillary rights see further eg *Bagott v Orr* (1801) 2 Bos & P 472 (right to collect fish or shell fish on the exposed shore when the tide is out); *Blundell v Catterall* (1821) 5 B & Ald 268 (passage and bathing); *Llandudno UDC v Woods* [1899] 2 Ch 705 (meetings, bathing); *Alfred F Beckett Ltd v Lyons* [1967] Ch 449, [1967] 1 All ER 833 (sea-coal); *Anderson v Alnwick District Council* [1993] 3 All ER 613, [1993] 1 WLR 1156, DC (worms); *Adair v National Trust for Places of Historic Interest or Natural Beauty* (1997) Times, 19 December (whelks); and WATER AND WATERWAYS vol 100 (2009) PARAS 46-62.

As to rights over the foreshore generally see WATER AND WATERWAYS vol 100 (2009) PARA 34 et seq.

4 *Coppinger v Sheehan* [1906] 1 IR 519.

5 *A-G v Johnson* (1819) 2 Wils Ch 87; *A-G v Burridge* (1822) 10 Price 350; *A-G v Parmeter* (1811) 10 Price 378 (affd sub nom *Parmeter v A-G* (1813) 10 Price 412, HL); *A-G v Terry* (1874) 9 Ch App 423; *Warren v Mathews* (1703) 6 Mod Rep 73; *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266. See also WATER AND WATERWAYS vol 100 (2009) PARA 82.

6 *Williams v Wilcox* (1838) 8 Ad & El 314 at 329 (weir which by a change in a course of a river became a nuisance to navigation). Before Magna Carta the Crown could destroy the public right of fishing by grant: see *Malcomson v O'Dea* (1863) 10 HL Cas 593; and PARA 228 ante. See also AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 797.

7 *R v Secretary of State for the Environment and Crown Estate Comrs and East Coast Aggregates Ltd, ex p Bryant* (1996) Water Law for May-June 1997 p 93. As to the Crown Estate Commissioners see PARA 280 et seq post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/244. Disputed claims.

244. Disputed claims.

If any claim to any foreshore on the part of the Crown Estate Commissioners[1] or the Chancellor and Council of the Duchy of Lancaster[2] is disputed by either of those departments, the commissioners, with the consent of the Treasury[3] and the Chancellor and Council of the duchy, may enter into an agreement for settling the dispute[4]. Such agreement may provide for the payment to or by the commissioners by or to the Chancellor and Council of the duchy of any sum of money in satisfaction of any claim which the department to whom the money is paid may have had to the foreshore which is the subject of the agreement[5].

Any agreement under this provision must be executed on the part of the duchy under the hand and seal of the Chancellor and attested by the clerk of the Council[6].

1 As to the Crown Estate Commissioners see PARA 280 et seq post.

2 As to the Chancellor and Council of the Duchy of Lancaster see PARA 305 post.

3 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

4 Crown Land Act 1906 s 3(1) (s 3 amended by the Coast Protection Act 1949 s 48, Sch 3; and continued in force by the Crown Estate Act 1961 s 9(3), Sch 2 Pt I para 2(e)).

5 Crown Lands Act 1906 s 3(2) (as amended and continued: see note 4 supra). Any money due from or received by the commissioners or the Chancellor and Council of the duchy under this provision is to be paid or applied as if payable or received for the purchase or sale of land: s 10 (amended by the Coast Protection Act 1949 ss 39(1), 48, Sch 3; and continued in force by the Crown Estate Act 1961 s 9(3), Sch 2 Pt I para 2(e)).

6 Crown Lands Act 1906 s 3(3) (as continued: see note 4 supra).

245. Powers of management.

The management of the foreshore has been transferred to the Crown Estate Commissioners[1].

By virtue of their general powers of management the commissioners may lease any part of the Crown foreshore[2], or may dispose of land for public or charitable purposes[3].

1 See the Coast Protection Act 1949 ss 37, 38 (both repealed); and PARA 279 post. As to the Crown Estate Commissioners see PARA 280 et seq post.

2 As to the general powers of management see the Crown Estate Act 1961 ss 1, 3 (as amended), s 6(1); and PARAS 283-284, 290, 295 post. As to leases of foreshore etc by the Bishop of Durham before it vested in the Crown see PARA 250 post.

3 See ibid s 4; and PARA 294 post.

246. Duchy of Lancaster.

The Crown's title to the foreshore abutting on the land of the county palatine of Lancaster rests either on its prima facie right or on the grants made to the dukes of Lancaster before the possessions of that dukedom became part of the possessions of the Crown[1].

1 There is no distinction between the privilege of the monarch in right of the Duchy of Lancaster and the prerogative as monarch: *Alcock v Cooke* (1829) 5 Bing 340. For some of the charters granted see Hardy *Charters of the Duchy of Lancaster*. As to the vesting of the duchy in the Crown see PARA 300 post. As to the Duchy of Lancaster generally see PARA 300 et seq post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/247. Duchy of Cornwall.

247. Duchy of Cornwall.

The Crown's prima facie title no longer holds good in the case of foreshore on the coast of Cornwall because, by a statute based on a charter of Edward III, the Crown's rights to the foreshores in Cornwall were vested in the Duke of Cornwall, except when they belong to a subject[1]. The rights to the foreshore as between the Crown and the Duke of Cornwall are now regulated by statute[2].

1 See *R v Keyn* (1876) 2 ExD 63 at 121, 155, 158, 199, 202, CCR. See also PARAS 268-269 post. As to the Duchy of Cornwall generally see PARAS 318-353 post.

As to the charter of 11 Edw 3 see *The Prince's Case* (1606) 8 Co Rep 1a at 8a, 16a; and PARA 318 post. The charter assigned to the duchy 'the profit of all the ports within the same our County of Cornwall to us belonging together with wreck of the sea as well as of whales and sturgeon and other fish which do belong to us by reason of our prerogative and whatsoever belongs to any wreck of the sea with any appurtenances in our said County of Cornwall'. This charter, as interpreted by the Cornwall Submarine Mines Act 1858, was held in *Penryn Corpn v Holm* (1877) 2 ExD 328 to have passed the rights of the Crown in all the Cornish foreshores to the duchy, although in fact, at the time of this charter, the Crown had already parted with its right to wreck on parts of this coast (see Quo Warranto Rolls (Cornwall); Hale's de Jure Maris, cc 6, 7 (Hargrave's Law Tracts 28, 41)), and probably all the foreshore. In *Dickens v Shaw* (1823) 1 LJOSKB 122 cited in Hall on Seashore, Appendix p 263, a grant of wreck was held not sufficient in itself to pass foreshore, although apparently in *Penryn Corpn v Holm* supra such a grant was considered to be sufficient, for the charter of 11 Edw 3 contains no direct grant of foreshore. As to wreck see PARAS 270-277 post.

Charles II was held entitled to the soil of Sutton Pool at Plymouth in right of the Duchy of Cornwall and not in right of the prima facie title: Hale's de Portibus, c 4 (Hargrave's Law Tracts 56-58).

Until 1844 duchy land was inalienable: see the Duchy of Cornwall Act 1844 s 1. See also *The Prince's Case* (1606) 8 Co Rep 13b; *Lopez v Andrew* (1826) 3 Man & Ry KB 329n; *A-G v Ceely* (1660) Wight 208; and PARA 319 post.

2 See the Cornwall Submarine Mines Act 1858; and PARAS 268-269 post. An award under this Act established the seaward limits of the county of Cornwall as between the Crown and the duchy: see PARA 268 note 6 post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/248. County palatine of Chester.

248. County palatine of Chester.

In the county palatine of Chester[1] the prima facie title of the Crown is rebutted by Domesday Book, which states that in Cheshire the Bishop of Chester held of the King what pertained to his bishopric, and that all the rest of the land of the county Earl Hugh with his men held of the King[2]. This palatinate is now vested in the Crown, and the title of the Crown to foreshore therefore rests upon the title of the Earls of Chester.

1 As to the county palatine of Chester see also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 Domesday Book, fol 262b.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/249. County palatine of Durham.

249. County palatine of Durham.

The prerogative rights relating to the foreshore in the county palatine of Durham[1] were formerly vested in the Bishop of Durham as incident to the franchise of the county palatine[2], but since 23 July 1858, with the exception of Holy Island, they have been vested in the Crown as part of the hereditary possessions and land revenues of the Crown[3], subject to certain leases previously granted by the Bishop of Durham and to certain other exceptions[4].

1 As to the county palatine of Durham see also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 Cf *A-G v Newcastle-upon-Tyne Corpn* (1903) 67 JP 155; *Prior of Tynemouth's Case* (1292) cited in Stuart Moore *History and Law of Foreshore* p 111. For the transfer of the palatine jurisdiction of the county palatine of Durham from the Bishop of Durham to the Crown see the Durham (County Palatine) Act 1836 (repealed). See also COURTS. As to the vesting of the jura regalia see note 3 infra.

3 See the Durham County Palatine Act 1858 s 2 (largely repealed).

The jura regalia of the county palatine were previously vested in the Crown as a franchise separate from the Crown by the Durham (County Palatine) Act 1836 (repealed), but by the Durham County Palatine Act 1858 the rights were vested in the Crown in right of the Crown: see s 5 (repealed); and PARA 298 post.

4 See PARA 250 post. The rights in the foreshore so transferred included (1) all the estate, right, title or interest of the Crown in right of the county palatine, and also all the estate, right, title and interest whatsoever of or to which the Bishop of Durham or the Ecclesiastical Commissioners were seised or entitled on 23 July 1858, either in right of or as part or parcel of the county palatine or see of Durham, or of any lordship, manor or seigniory forming part of the possessions of the county palatine or see respectively, in and to the soil and freehold of the beds and shores of the sea below high water mark, and also (except as mentioned below) in and to any inclosures, embankments or encroachments made from it or upon it respectively within or adjacent to the county of Durham; (2) a similar interest in and to any stocks, funds, securities or money standing in the name of the Accountant General of the Supreme Court (formerly the Accountant General of the Court of Chancery) representing the purchase money or value of any part of those beds and shores, subject to any dispositions of the interest of the see of Durham in such stocks etc which had been lawfully made by the bishops of Durham prior to 23 July 1858: see the Durham County Palatine Act 1858 s 2 (largely repealed). As to the exception of Holy Island from the transfer see PARA 250 post. The county of Durham comprised the county of Durham and Sadberge, including the detached parts of Craikshire, Bedlingtonshire, Norhamshire, Allertonshire and Islandshire and all other places formerly within the jurisdiction of the Bishop of Durham in right of the county palatine: see the Durham (County Palatine) Act 1836 s 7 (repealed); and the Durham County Palatine Act 1858 s 1 (amended by the Statute Law Revision Act 1892).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/250. Exceptions from the transfer in Durham.

250. Exceptions from the transfer in Durham.

The transfer[1] did not apply to Holy Island, situate in Islandshire in the county palatine[2]. Nor did it extend to transfer to or vest in the Crown the right or title of the Bishop of Durham, or of the Ecclesiastical Commissioners, in or to any land reclaimed from the flow of the tide in any navigable river or upon the shore of the sea within the county of Durham from which the bishop had before 21 June 1836 actually received rent after the land had been reclaimed[3]. All such reclaimed land is deemed to be parcel of the possessions formerly belonging to the see of Durham, and is now vested in the Church Commissioners[4].

The transfer was made subject to any then existing leases affecting the land transferred[5].

1 See PARA 249 ante.

2 Durham County Palatine Act 1858 s 2 (largely repealed, but without affecting this provision).

3 Ibid s 2 (largely repealed).

4 See ibid s 3 (repealed); and the Church Commissioners Measure 1947 (No 2) s 1 (as amended), ss 2, 18(1). As to the Church Commissioners see ECCLESIASTICAL LAW.

5 Durham County Palatine Act 1858 s 2 (largely repealed), s 3 (repealed). On the determination of any such lease which included property belonging to the Crown, the property was to become subject to the Acts regulating the management of Crown land; and the counterparts of all leases of any hereditaments of which the whole rents were by the Durham County Palatine Act 1858 directed to be paid to the Commissioners of Woods (now the Crown Estate Commissioners: see PARA 279 et seq post), were directed to be delivered up to the commissioners immediately after 23 July 1858. As to leases under which the whole or a portion of the rents and profits were directed to be paid to the commissioners, counterparts were directed to be made in the office of the Ecclesiastical Commissioners (now the Church Commissioners: see the Church Commissioners Measure 1947 (No 2) s 1 (as amended), ss 2, 18(1); and ECCLESIASTICAL LAW) and counterparts and copies were directed to be enrolled in the office of Land Revenue Records and Enrolments, and the enrolment was admissible as evidence of the lease: see the Durham County Palatine Act 1858 s 3 (repealed). See generally ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/251. Application of rents and profits in Durham.

251. Application of rents and profits in Durham.

All rents, profits and other money received[1] by the Crown Estate Commissioners[2] from, and the proceeds of any sales or dispositions made by them of, any part of the bed or shores of any navigable river so far as the tide flows, or of the shores of the sea below high water mark, or of any inclosures, embankments and encroachments made therefrom or thereupon respectively within the county of Durham, after deducting all costs, charges and expenses in any wise incidental to the sale, management or recovery of such property, are to be divided in half; one-half is to be applied by the commissioners as part of the hereditary revenues of the Crown, and the other half is to be paid by the commissioners to the Church Commissioners[3], but the latter are not, on account of such apportionment, to have any right to interfere with the management or disposition of the property[4].

1 Ie under the Durham County Palatine Act 1858 or otherwise: s 4 (as amended: see note 4 infra).

2 Ibid s 4 originally referred to the Commissioners of Woods. As to the devolution of the management of Crown lands to the Crown Estate Commissioners see PARA 279 post. As to the Crown Estate Commissioners generally see PARA 280 et seq post.

3 The Church Commissioners have replaced the Ecclesiastical Commissioners: see the Church Commissioners Measure 1947 (No 2) s 1 (as amended), ss 2, 18(1). See also ECCLESIASTICAL LAW.

4 See the Durham County Palatine Act 1858 s 4 (amended by the Church Commissioners Measure 1947 (No 2) s 18(2); the Crown Estate Act 1956 s 1; the Crown Estate Act 1961 ss 1, 9, 10, Sch 2 para 4(1), Sch 3 Pt I; and the Forestry (Title of Commissioners of Woods) Order 1924, SR & O 1924/1370). Such property is to be managed as part of the hereditary possessions of the Crown as if no such provision as to apportionment had been made: Durham County Palatine Act 1858 s 4 (as so amended). The Act contained a saving of the rights of all persons, bodies politic and corporate etc (other than in the cases provided for or intended to be provided for by the Act), enjoyed by them before 23 July 1858, or which they could or might have enjoyed if the Act had not been passed: s 6 (repealed).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/252. How title to foreshore is established.

252. How title to foreshore is established.

A subject (not being Duke of Cornwall[1]) may own foreshore either as a hereditament in gross, or as parcel of a seigniory, honour, manor or town[2] or land[3], and he can establish a title against the Crown to any part of the foreshore (1) by producing an express grant of it from the Crown[4]; or (2) by evidence from which such a grant may be inferred[5]; or (3) by construction of a grant in ambiguous or general terms[6]; or (4) by possession for a period of over 60 years[7]; or (5) by proof that the foreshore has come into existence by a sudden incursion of tidal water[8].

1 As to the rights of the Duke of Cornwall in the foreshore see PARA 247 ante.

2 *Foster v Warblington UDC* [1906] 1 KB 648 at 658, CA. See also PARA 254 post.

3 Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 26, 27); *Foster v Warblington UDC* [1906] 1 KB 648, CA. See also the cases cited in para 254 notes 13-16 post.

4 *Duke of Devonshire v Hodnett* (1827) 1 Hud & B 322. If the original grant is not forthcoming a certified copy from the Public Record Office suffices: see the Public Records Act 1958 s 9; and CIVIL PROCEDURE vol 11 (2009) PARA 887. Formerly an exemplification or constat had to be used: see Roscoe *Evidence in Civil Actions* (20th Edn) p 99. Ancient grants of the Crown without evidence of possession are not enforced: *A-G v Richards* (1795) 2 Anst 603; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA; *Johnston v O'Neill* [1911] AC 552, HL. Where there are several grants by the Crown of the same piece of foreshore, the first grant prevails: *Vyner v Mersey Docks and Harbour Board* (1863) 14 CBNS 753. As to royal grants generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 849 et seq.

5 *Kingston-upon-Hill Corpn v Horner* (1774) 1 Cowp 102; *Re Alston's Estate* (1856) 28 LTOS 337. Where a grant cannot be produced, evidence of ancient documents and modern acts of ownership unquestioned by the Crown are sufficient to sustain a title against the Crown: *Re Alston's Estate* supra. Proof of the enjoyment of a several fishery by fixed engines raises the presumption that the foreshore belongs to the owner of the several fishery: A-G *v Emerson* [1891] AC 649, HL; *Foster v Warblington UDC* [1906] 1 KB 648, CA. As to the presumption of grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 867-869. See also AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

6 See *Hamilton v A-G* (1880) 5 LR Ir 555; and the cases cited in para 253 notes 3-5 post. See also PARA 254 post. As to the construction of grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 858 et seq. See also *Lonsdale (Earl) v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887.

7 See the Limitation Act 1980 ss 15, 37, Sch 1 para 11(2). If the land has ceased to be foreshore during the currency of the period the Crown may sue to recover it within 30 years from the time when the land ceased to be foreshore or within 60 years of the accrual of the right of action, whichever period first expires: see Sch 1 para 11(2). As between subjects the period of limitation is 12 years: see s 15(1). See generally LIMITATION PERIODS.

8 See *Carlisle Corpn v Graham* (1869) LR 4 Exch 361; and WATER AND WATERWAYS vol 100 (2009) PARA 42.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/253. Grant of foreshore.

253. Grant of foreshore.

Foreshore passes from the Crown by a grant which expressly refers to it by that name or has words which aptly describe it[1]. However, less apt words suffice to pass the foreshore from the Crown if the grantee can show user under his grant, for when a question arises as to what passed by an ancient deed it can be explained by modern usage[2]. Thus the Crown may alienate foreshore by other words if that is the apparent intention to be collected from the grant itself, or by the construction of an ancient grant by user. Where there is a doubt whether the grant includes the foreshore or not, it is to be solved by reference to the user[3]. Where the user has been long and notorious the proper course is to attribute the user to a legal origin and not to usurpation[4]. In interpreting such grants, evidence of user before the time of the grant may also be given to explain what was granted[5].

1 As to words in ancient grants that suffice to pass the foreshore see 1 Hale's de Jure Maris, cc 5, 6 (Hargrave's Law Tracts 18, 19, 20, 26); *A-G v Emerson* [1891] AC 649 at 661, HL; *Hindson v Ashby* [1896] 2 Ch 1 at 11, CA. See also the grant to the Abbey of Strata Florida 'in litore et in mari' (Dugdale *Monasticon Anglicanum* v 633); and to the Abbot of St Augustine 'totum littus usque in medietotem aquae' (Stuart Moore *History and Law of Foreshore* p 16). For numerous other expressions sufficient to pass the foreshore see Stuart Moore *History and Law of Foreshore* p 16. See also *Duke of Devonshire v Hodnett* (1827) 1 Hud & B 322. As to grants of several fisheries and foreshore see further AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARAS 803, 805.

2 *Duke of Beaufort v Swansea Corpn* (1849) 3 Exch 413; *Duke of Devonshire v Pattinson* (1887) 20 QBD 263, CA; *Lord Waterpark v Fennell* (1859) 7 HL Cas 650; *Re Belfast Dock Act 1854, ex p Earl of Ranfurly* (1867) IR 1 Eq 128. But see *Lonsdale (Earl) v A-G* [1982] 3 All ER 579, [1982] 1 WLR 887.

3 *A-G for Ireland v Vandeleur* [1907] AC 369, HL. See also PARA 254 post.

4 *Marquis of Donegall v Lord Templemore* (1858) 9 ICLR 374. It has been held that a grant by the Crown by letters patent of Vancouver Island 'together with all the royalties of the seas upon these coasts' passed title to the foreshore adjacent to Vancouver Island; and that, even if this interpretation was doubtful, the continuous and exclusive possession of the foreshore by the grantees' successors in title for over 68 years put the matter beyond doubt: see *Re Hirst Estate Land Co* [1943] 4 DLR 422.

5 *Van Diemen's Land Co v Table Cape Marine Board* [1906] AC 92, PC. Where the terms of the grant are plain and unambiguous it cannot be explained by previous or subsequent user: *Wyatt v A-G of Quebec* [1911] AC 489, PC.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/254. Grants passing foreshore.

254. Grants passing foreshore.

Foreshore has been held to pass by a grant containing the words 'anchorage'[1], 'ooze' or 'wagessum'[2], 'sea ground' or 'shore'[3], 'ripa'[4], 'waste'[5], 'wreck'[6], 'wreck by all their lands upon the sea'[7], 'terra de -- cum pertinentiis'[8], 'weirs' or 'gurgites'[9].

Foreshore also has passed by a grant of a manor 'cum omnibus pertinentiis'[10] or with anchorage, groundage and wreck of the sea[11], or with fisheries, wreck of the sea and all other rights and jurisdictions[12], or as parcel or reputed parcel of an honour, seigniory or manor[13]. It may also pass by a grant of land with all and singular lands, tenements etc to the premises or any part thereof incident or appurtenant, or accepted, reputed, or known as part or parcel of the same[14], or with waters, wastes, fisheries, wreck etc or other general words if there has been sufficient evidence of possession under the grant[15]. Foreshore might also pass by the grant of a town in fee farm[16].

When the grant was of wreck or of royal fish 'infra manerium'[17] there was a great presumption that the foreshore was part of the manor, for wreck and royal fish are not taken above the high water mark[18]; but a grant of these privileges per se did not necessarily confer a title to the foreshore[19].

1 *Foreman v Free Fishers and Dredgers of Whitstable* (1869) LR 4 HL 266; *Le Strange v Rowe* (1866) 4 F & F 1048.

2 *Foster v Frost* (1887) cited in Stuart Moore *History and Law of Foreshore* pp 41, 163; *Bridges v Highton* (1865) 11 LT 653; *Re Alston's Estate* (1856) 28 LTOS 337; *Scratton v Brown* (1825) 4 B & C 485.

3 *Scratton v Brown* (1825) 4 B & C 485.

4 *Re Belfast Dock Act 1854, ex p Earl of Ranfurly* (1867) IR 1 Eq 128.

5 *A-G v Hanmer* (1858) 31 LTOS 379; *Foster v Warblington UDC* [1906] 1 KB 648 at 658, CA.

6 *Penryn Corpn v Holm* (1877) 2 ExD 328. See also PARA 247 note 1 ante.

7 *Chad v Tilsed* (1821) 5 Moore CP 185 at 192.

8 *Duke of Beaufort v Swansea Corpn* (1849) 3 Exch 413; *Healy v Thorne* (1870) IR 4 CL 495.

9 Hale's de Jure Maris, c 5 (Hargrave's Law Tracts 18, 20); *Hanbury v Jenkins* [1901] 2 Ch 401.

10 *Duke of Beaufort v Swansea Corpn* (1849) 3 Exch 413. See also Stuart Moore *History and Law of Foreshore* pp 161-162.

11 *Le Strange v Rowe* (1866) 4 F & F 1048.

12 *A-G v Jones* (1862) 2 H & C 347; *Calmady v Rowe* (1844) 6 CB 861.

13 *Sir Henry Constable's Case* (1599) cited in Stuart Moore *History and Law of Foreshore* p 233; *A-G v Constable* (1575) cited in Stuart Moore *History and Law of Foreshore* p 224; *Duke of Beaufort v Swansea Corpn* (1849) 3 Exch 413; *Re Walton-cum-Trimley Manor, ex p Tomline* (1873) 28 LT 12; *Biddulph v Arthur* (1755) 2 Wils 23. See also Stuart Moore *History and Law of Foreshore* pp 75, 648-649; Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 27) ('foreshore may not only be parcel of a manor, but de facto it many times is so, and perchance it is parcel almost of all such manors as by prescription have royal fish or wrecks of the sea within their manor').

14 *Brew v Haren* (1874) IR 9 CL 29.

15 *Hamilton v A-G* (1880) 5 LR Ir 555; *Healy v Thorne* (1870) IR 4 CL 495.

16 *A-G v Portsmouth Corpn* (1877) 25 WR 559.

17 There is some authority for the view that 'infra manerium' means within the manor, and not below or under the manor: see Stuart Moore *History and Law of Foreshore* pp 304, 646, 752n. Cf *Lord Advocate v Wemyss* [1900] AC 48 at 60-61, HL ('infra fluxum maris' used to designate coal 'under the foreshore').

18 Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 27); *A-G v Emerson* [1891] AC 649 at 661, HL; *Blundell v Catterall* (1821) 5 B & Ald 268 at 303; *R v Ellis* (1813) 1 M & S 652 at 661-662. See also note 13 supra.

19 *Dickens v Shaw* (1823) 1 LJOSKB 122 cited in Hall on Seashore, Appendix p 263. The observations of the judges in this case must be taken with reference to the particular circumstances there in proof (*Calmady v Rowe* (1844) 6 CB 861 at 892 per Coltman J), for wreck may be granted 'infra metas' and not 'infra manerium': see Stuart Moore *History and Law of Foreshore* pp 48, 81, 470, 641, 648; *Penryn Corpn v Holm* (1877) 2 ExD 328. See also PARA 247 note 1 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/255. Extent of grant.

255. Extent of grant.

As in the case of other land, a grant of foreshore carries the whole materials below it 'usque ad centrum'[1]; but it does not convey the right to a several fishery over it[2]. Where the grant is by conveyance it must be construed to ascertain if it extends to the foreshore as it is from time to time or conveys a specific portion of the earth's surface, irrespective of its condition, whether dry land, foreshore or sea bed[3].

1 *Lord Advocate v Wemyss* [1900] AC 48 at 68, HL.

2 *A-G v Emerson* [1891] AC 649 at 654, HL, per Lord Herschell. This is because a several fishery in the sea may exist as a separate incorporeal hereditament: *A-G v Emerson* supra at 654 per Lord Herschell. As to several fisheries see PARA 228 ante; and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 805.

3 *Baxendale v Instow Parish Council* [1982] Ch 14, [1981] 2 All ER 620 (if the conveyance delineates an area on a plan, that may indicate a fixed or conventional grant excluding the rules of accretion and dereliction).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/256. Proof of possession.

256. Proof of possession.

In proving possession of foreshore the owner is only required to prove that he has had all the beneficial user of the foreshore which would naturally have been enjoyed by a direct grantee of the Crown[1]. Foreshore in its natural state cannot be exclusively possessed, because the public cannot be excluded from exercising their rights belonging to it; moreover, it is practically impossible to prevent occasional encroachment, because the cost of preventive measures will be altogether disproportionate to the value of the foreshore[2]. No precise rule can be laid down as to the character and amount of possession necessary in order to prove a prescriptive right to foreshore: each case must depend upon its own circumstances because the beneficial enjoyment of which the foreshore admits is an exceedingly variable quantity[3].

1 As to acts of ownership see PARA 257 post.

2 *Lord Advocate v Young, North British Rly Co v Young* (1887) 12 App Cas 544 at 553, HL; *A-G for Ireland v Vandeleur* [1907] AC 369, HL, where the owner of the shore neglected to take proceedings at law against a railway company, which had laid rails on the shore, and Lord Loreburn LC said at 371 'when he declined to encounter so great a litigation for so small a stake, he exhibited proof rather of his good sense than of any infirmity in his title. Still it is evidence against him, but is overborne by the other evidence'.

3 *Lord Advocate v Young, North British Rly Co v Young* (1887) 12 App Cas 544, HL (taking of stone, sand and seaweed, and erecting a wall and a bathing box, held sufficient evidence in Scotland to defeat the Crown's claim). Unless it can be shown to have originated in usurpation, usage for 40 years is evidence from which usage anterior to that time may be presumed: *Chad v Tilsed* (1821) 2 Brod & Bing 403; *Lord Waterpark v Fennell* (1859) 7 HL Cas 650. See also PARA 252 note 7 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/257. Acts of ownership.

257. Acts of ownership.

In proving possession by acts done on the foreshore, it is necessary that the acts were those which a lawful owner might do, and were so done that those who were interested in disputing the ownership would be aware of them[1]. Acts that tend to prove possession of a part of a tract of foreshore tend to prove ownership of the whole tract, if it is of such a common character as would raise a reasonable inference that possession of one part was possession of the whole[2]. The weight of the aggregate of many acts of ownership taken together is very much greater than the sum of the weight of each such act taken separately[3]. The acts relied upon to prove possession must be done with the intention of asserting possession[4].

Possession of foreshore can be proved by the same acts as are sufficient to prove possession to land above the high water mark, and in particular by evidence of taking of sand, stones and seaweed, and licensing persons to do so; inclosing and embanking against the sea, and enjoyment of what is thus inclosed; erection of wharves, piers, groynes and other works; taking of anchorage and groundage dues; mining; taking of wreck and royal fish, and the enjoyment of a several fishery over the foreshore[5]; and shooting over the foreshore[6]. Paying for the burial of dead bodies washed ashore or found on the foreshore has been admitted as proof of the right to wrecks[7].

1 *Lord Advocate v Lord Blantyre* (1879) 4 App Cas 770 at 792, HL; *Jones v Williams* (1837) 2 M & W 326 at 331; *Neill v Duke of Devonshire* (1882) 8 App Cas 135 at 165-166, HL; *A-G for Ireland v Vandeleur* [1907] AC 369 at 371, HL; *Re Alston's Estate* (1856) 28 LTOS 337. It is not necessary that the acts should be brought to the knowledge of the person interested in disputing the title, but only that they are of such a character that he or his agents could have perceived them: *Jones v Williams* supra; *Lord Advocate v Lord Blantyre* supra. As to proof of possession of a several fishery see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 805.

2 See the cases cited in note 1 supra.

3 *Lord Advocate v Lord Blantyre* (1879) 4 App Cas 770 at 791, HL; *A-G v Emerson* [1891] AC 649 at 659-660, HL.

4 Ie with animus possidendi: *Philpot v Bath* (1905) 21 TLR 634, CA (placing stones on the foreshore for the sole purpose of protecting riparian land creates only an easement). See also *Le Strange v Rowe* (1866) 4 F & F 1048; and WATER AND WATERWAYS vol 100 (2009) PARAS 38, 55.

5 Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 27). As to evidence of ownership by taking seaweed, gravel or stones see WATER AND WATERWAYS vol 100 (2009) PARAS 55-57, 61; as to wreck see PARA 270 et seq post; and as to royal fish see PARA 229 ante. See also *A-G v Jones* (1862) 2 H & C 347 (taking and preventing persons taking stones, sand and wreck); *Le Strange v Rowe* (1866) 4 F & F 1048 (wreck, groynes and licensing the taking of mussels); *Lord Advocate v Lord Blantyre* (1879) 4 App Cas 770, HL (cutting reeds, taking seaweed, sand or stones, and depositing matter on the foreshore); *A-G v Hanmer* (1858) 31 LTOS 379 (coal); *Chad v Tilsed* (1821) 5 Moore CP 185 at 192 (embanking of foreshore); *Lord Advocate v Young, North British Rly Co v Young* (1887) 12 App Cas 544, HL (embanking foreshore and taking stones and seaweed); *A-G for Ireland v Vandeleur* [1907] AC 369, HL (quay); *Van Diemen's Land Co v Table Cape Marine Board* [1906] AC 92, PC (piers are evidence of seisin of the foreshore); *Re Alston's Estate* (1856) 28 LTOS 337 (stages); *Scratton v Brown* (1825) 4 B & C 485; *A-G v Emerson* [1891] AC 649, HL (letting of fishing places on shore by copy of court roll is evidence that the shore is within the manor). As to evidence of ownership of the soil of a fishery see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 817. The fact that cattle stray from a marsh onto the foreshore is not evidence of possession, although it is if they are put there: *A-G v Chambers* (1859) 4 De G & J 55; *Lord Advocate v Lord Blantyre* supra. As to the effect of equivocal acts of possession by plaintiffs and defendant see *Canvey Island Comrs v Preedy* [1922] 1 Ch 179.

6 *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139. See also WATER AND WATERWAYS vol 100 (2009) PARAS 52-54.

7 See the Burial of Drowned Persons Act 1808 s 13 (repealed); and the Burial of Drowned Persons Act 1886 s 1 (repealed). Burying the dead and looking after the living and securing the goods for the owners is a sufficient consideration for a custom to have the best anchor or chattel from a stranded ship (*Simpson v Bithwood* (1691) 3 Lev 307), but such a custom is bad unless there is an adequate consideration (G*eere v Burkensham* (1683) 3 Lev 85). As to the liability of local authorities to bury dead bodies found on the foreshore see CREMATION AND BURIAL.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/258. Artificial reclamation on foreshore.

258. Artificial reclamation on foreshore.

Artificial works of reclamation do not divest the Crown of its title to any part of the foreshore[1] but, conversely, have no effect on the riparian rights of the frontagers, so that the frontagers' rights may exist even after the land has ceased to be subject to the flow and reflow of the tide[2].

1 *A-G of Southern Nigeria v John Holt & Co (Liverpool) Ltd* [1915] AC 599, PC. It is otherwise if the alteration is natural and imperceptible: see PARAS 263-264 post; and WATER AND WATERWAYS vol 100 (2009) PARAS 38-39.

2 *A-G of Southern Nigeria v John Holt & Co (Liverpool) Ltd* [1915] AC 599 at 621, PC. Abandonment of these rights is a question of intention, and in the nature of things cannot easily be presumed.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/259. Acts of the public.

259. Acts of the public.

Acts done by the public on the foreshore are not acts of the Crown upon which it can rely as evidence of possession by the Crown, although they may tend to derogate from the alleged possession of the person claiming a possessory title in the foreshore and, if carried far enough, may deprive his possession of that exclusive character which is necessary in order to establish a prescriptive right[1].

1 *Lord Advocate v Young, North British Rly Co v Young* (1887) 12 App Cas 544 at 554, HL; *A-G v Emerson* [1891] AC 649 at 661-662, HL; *Blount v Layard* (1888) [1891] 2 Ch 681n, CA; *Neill v Duke of Devonshire* (1882) 8 App Cas 135, HL; *Johnston v O'Neill* [1911] AC 552, HL. Such acts do not necessarily lead to the inference that the owner of the foreshore has abandoned his right to the soil: *Fitzpatrick v Robinson* (1828) 1 Hud & B 585.

260. Possession against a trespasser.

As against a trespasser it is not necessary for persons claiming foreshore to produce evidence of possession sufficient to displace the Crown's title; and it is not open to the trespasser to give evidence of acts of ownership by the Crown unless he can prove that they were done with the knowledge of the person claiming possession[1].

1 *Hastings Corpn v Ivall* (1874) LR 19 Eq 558; *Harper v Charlesworth* (1825) 4 B & C 574 at 593; *Johnson v Barret* (1646) Aleyn 10.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/261. Protection of Crown rights.

261. Protection of Crown rights.

In order to protect the Crown's interests, upon an application for registration of title to property which comprises foreshore, one month's notice must be given to the Crown Estate Commissioners[1], and also, as to land in the county palatine of Lancaster[2], to the proper officer of the Duchy of Lancaster[3]; in the case of land in the counties of Cornwall or Devon, to the proper officer of the Duke of Cornwall[4]; and in the case of land within the jurisdiction of the Port of London Authority, to that authority[5]. In the case of registration otherwise than with a possessory or a good leasehold title, the registrar may not register the land until he is satisfied that the notice has been given[6].

1 As to the Crown Estate Commissioners see PARA 280 et seq post.

2 As to the county palatine of Lancaster see PARA 300 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

3 As to the Duchy of Lancaster see PARAS 300-317 post.

4 As to the Duchy of Cornwall see PARAS 318-353 post.

5 See the Land Registration Act 1925 s 97 (amended by the Crown Estate Act 1961 s 9(4), Sch 3 Pt I). The registrar is under no obligation to serve notices in the case of applications for registration with a possessory title or a good leasehold title (Land Registration Act 1925 s 97(2)), but in practice he will usually do so: see further LAND REGISTRATION. As to the Port of London Authority see PORTS AND HARBOURS.

6 See note 5 supra.

UPDATE

261 Protection of Crown rights

NOTE 5--Land Registration Act 1925 repealed and replaced by the Land Registration Act 2002; see LAND REGISTRATION.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/262. Coast protection work.

262. Coast protection work.

The statutory provisions[1] which give coast protection authorities[2] power to counter erosion and encroachment by the sea on the coast of Great Britain[3] bind the Crown and apply in relation to any Crown land[4], save that (1) except with the consent of the appropriate authority, no interest in Crown land[5] can be acquired by compulsory purchase under those provisions[6]; (2) except with such consent those provisions do not operate so as to require the Crown or that authority to pay any coast protection charges[7] in respect of any land or authorise any person to enter upon Crown land[8]; and (3) an order prohibiting excavation or removal of material upon or under the seashore[9] does not bind the Crown if the order has effect without being confirmed by the Minister of Agriculture, Fisheries and Food or, in relation to Wales, the Secretary of State for Wales[10].

1 Ie the Coast Protection Act 1949 Pt I (ss 1-33) (as amended): see WATER AND WATERWAYS vol 101 (2009) PARA 502 et seq. As to coast protection generally see WATER AND WATERWAYS vol 101 (2009) PARA 499 et seq.

2 As to the constitution of coast protection authorities see ibid s 1(1) (amended by the Local Government Act 1972 s 272(1), Sch 30); and WATER AND WATERWAYS vol 101 (2009) PARA 508 et seq.

3 For the meaning of 'Great Britain' see PARA 207 note 8 ante.

4 See the Coast Protection Act 1949 s 32(1); and WATER AND WATERWAYS vol 101 (2009) PARA 502.

5 For these purposes, 'Crown land' means land an interest in which belongs (1) to Her Majesty in right of the Crown (in which case the appropriate authority is the Crown Estate Commissioners) or of the Duchy of Lancaster (in which case the appropriate authority is the Chancellor of the Duchy of Lancaster); or (2) to the Duchy of Cornwall (in which case the appropriate authority is such person as the Duke of Cornwall or the possessor for the time being of the duchy appoints); or (3) to a government department (in which case the appropriate authority is the minister in charge of that department); or land an interest in which is held in trust for Her Majesty for the purposes of a government department (in which case the appropriate authority is the minister in charge of that department): see ibid s 32(5). Section 32(5) refers to the Commissioners of Crown Lands, but these commissioners have now been reconstituted as the Crown Estate Commissioners: see the Crown Estate Act 1956 s 1 (repealed); and PARA 279 et seq post. In case of doubt the Treasury decides which is the appropriate authority: Coast Protection Act 1949 s 32(5).

6 Ibid s 32(2).

7 As to the raising of money for coast protection charges in respect of Crown land see ibid s 11(2)(b)-(d); and WATER AND WATERWAYS vol 101 (2009) PARA 544.

8 Ibid s 32(3).

9 Ie under ibid s 18 (as amended): see WATER AND WATERWAYS vol 100 (2009) PARA 58 et seq.

10 Ibid s 32(4). As to the devolution of functions under Pt I (as amended) upon the Minister of Agriculture, Fisheries and Food or, in respect of Wales, upon the Secretary of State for Wales see LOCAL GOVERMENT vol 29(1) (Reissue) PARA 106.

UPDATE

262 Coast protection work

NOTES--Functions under the 1949 Act transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672.

As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

263. Land formed by alluvion.

Where land is formed by alluvion, namely by the casting up of earth or sand on the shore of the sea, the additional increment belongs to the Crown where the casting up of the earth or sand takes place suddenly[1]. However, where new land is formed by small accretions and the additions or increments are so gradual as to be inappreciable, these belong to the owner of the adjacent land[2], whether the accretions are due to natural or to artificial causes, provided in the latter case the user of the land is lawful[3].

1 Hale's de Jure Maris (Hargrave's Law Tracts 14); 2 Bl Com (14th Edn) 262. See also *Anon* (1573) 3 Dyer 326b. The same applies when it is formed by artificial works of reclamation: see PARA 258 ante.

2 Hale's de Jure Maris (Hargrave's Law Tracts 14); 2 Bl Com (14th Edn) 262; *R v Lord Yarborough* (1828) 2 Bli NS 147, HL; *Doe d Seebkristo v East India Co* (1856) 10 Moo PCC 140.

3 *A-G v Chambers* (1859) 4 De G & J 55; *Southern Centre of Theosophy Inc v State of South Australia* [1982] AC 706, [1982] 1 All ER 283. Where the artificial causes are intended to produce the accretion the Crown would, it seems, be entitled: *A-G v Chambers* supra. Where title depends on a grant of a specific area of the earth's surface these rules may be excluded: *Baxendale v Instow Parish Council* [1982] Ch 14, [1981] 2 All ER 620. See also PARA 255 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/264. Land left bare by diluvion.

264. Land left bare by diluvion.

Prima facie the Crown is entitled to land which is suddenly left bare in the narrow seas or in rivers as far up as the tide flows and reflows[1]. However, if the site on which the land is situate belongs to a subject by grant or prescription[2], the land left bare by diluvion belongs to the subject[3]. Furthermore, when the diluvion or dereliction takes place gradually the land left bare belongs to the adjacent owner[4]; and it seems that the Crown is not entitled where the owner of land left bare, which was formerly covered, can recognise any portion which originally belonged to him[5], or where an island is created by a sudden act of water in cutting off land or by a sudden recession of the water[6]. The same rules seem to apply to a sandbank in a river which uncovers at low water[7].

1 Hale's de Jure Maris (2 Hargrave's Law Tracts 17). The Crown is not entitled where land is left bare or new islands arise in rivers in which there is no tide; in both of these cases the land belongs to the riparian owner or owners: 2 Roll Abr 170 pl 15; 2 Bl Com (14th Edn) 261. As to the rights of riparian owners see WATER AND WATERWAYS vol 100 (2009) PARA 81 et seq.

2 The soil of creeks and tidal rivers may have become vested in a subject either by charter or prescription and either in gross or as parcel of a manor: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 107a; *Anon* (1573) 3 Dyer 326b.

3 Hale's de Jure Maris (Hargrave's Law Tracts 26, 36).

4 2 Bl Com (14th Edn) 262. As to whether the Crown can grant land under the sea which subsequently becomes derelict see *A-G v Turner* (1676) 2 Mod Rep 106.

5 *A-G v Chamberlaine* (1858) 4 K & J 292 at 299-300.

6 See Coulson and Forbes *Law of Waters* (6th Edn, 1952) p 43.

7 *Wedderburn v Patterson* (1864) 2 Macph 902, Ct of Sess.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/265. Works on the foreshore.

265. Works on the foreshore.

Before commencing any work below high water mark with respect to a harbour, port, bay, estuary or navigable river comprised in a notice given under the Harbours Transfer Act 1862[1], plans, specifications and working drawings of the proposed works must be deposited at the Ministry of Defence for approval[2]; and before commencing any work below high water mark with respect to all other parts where the tide flows, plans, specifications, and working drawings must be deposited with the Secretary of State for the Environment, Transport and the Regions[3] for approval[4].

Where the land, soil or water, or any right in respect of it, belongs to Her Majesty in right of the Crown, works so approved may not be undertaken without the previous consent in writing of the Crown Estate Commissioners[5].

1 Ie under the Harbours Transfer Act 1862 s 9 (as amended), which enabled the Admiralty by notice to require that any harbour, port, bay, estuary or navigable river in, on or adjoining which there was a naval dockyard or station should be excepted from the operation of s 8 (as amended), by which powers for the protection of navigation under local Acts were transferred from the Admiralty to the Board of Trade. See PORTS AND HARBOURS; WATER AND WATERWAYS vol 101 (2009) PARA 535. The property, rights and liabilities of the Admiralty are now vested in the Secretary of State for Defence: see the Defence (Transfer of Functions) Act 1964 ss 1(1), (2), 2(2), 3(2). The functions of the Board of Trade relating to navigation were transferred in several ministerial re-organisations, culminating in a transfer to the Secretary of State for Transport (see the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127), whose functions are now the responsibility of the Secretary of State for the Environment, Transport and the Regions (see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971). See also PORTS AND HARBOURS.

2 The Improvement of Land Act 1864 s 40 (as amended: see note 4 infra) refers to the Admiralty Office, but this should now be read as a reference to the Ministry of Defence: see note 1 supra.

3 Ibid s 40 (as amended: see note 4 infra) refers to the office of the Board of Trade, but its functions in this respect have been transferred to the Secretary of State for the Environment, Transport and the Regions: see note 1 supra.

4 Ibid s 40 (amended by the Statute Law (Repeals) Act 1993). The work is to be constructed only in accordance with the requisite written approvals; when commenced or constructed, the works may not be altered or extended without obtaining previous consent and approval; if such work is commenced or completed, or altered, extended or constructed, contrary to the provisions of the Act, the Secretary of State for Defence or the Secretary of State for the Environment, Transport and the Regions, as the case may require, may abate, alter and remove the works and restore the site to its former condition, at the cost and charge of the person or company executing the work, recoverable as a debt due from that person or company to the Crown: Improvement of Land Act 1864 s 40 (as so amended).

5 See ibid s 35 (amended by the Statute Law Revision Act 1893). As to the Crown Estate Commissioners see PARA 280 et seq post.

UPDATE

265-266 Works on the foreshore, Protection of foreshore

Functions under the 1864 Act transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/266. Protection of foreshore.

266. Protection of foreshore.

If the Secretary of State for Defence[1] or the Secretary of State for the Environment, Transport and the Regions[2] orders a local survey and examination of any embankment or work proposed to be constructed under the powers of the Improvement of Land Act 1864 in, over or affecting a tidal or navigable water or river, or of its intended site, the costs of the local examination are to be defrayed by the landowner[3].

One month's notice in writing of an application to register the title to land comprising Crown foreshore must be given to the Crown Estate Commissioners before registration[4].

Pits, shafts, adits, drifts, levels, drains, watercourses, pools or embankments may not be sunk, driven or made so as to injure, weaken or endanger or be likely to injure, weaken or endanger piers or other structures on or near the foreshore[5].

A local authority may not take, use or interfere with the shore or bed of the sea or of any river, channel, creek, bay or estuary, or any land, hereditaments, subjects or right of any description belonging to Her Majesty in right of the Crown without consent[6].

1 As to the transfer of functions to the Secretary of State for Defence see PARA 265 notes 1-2 ante.

2 As to the transfer of functions to the Secretary of State for the Environment, Transport and the Regions see PARA 265 notes 1, 3 ante.

3 See the Improvement of Land Act 1864 s 41 (amended by the Statute Law (Repeals) Act 1993). Works in respect of land or water belonging to Her Majesty in right of the Crown may not be undertaken without the previous consent in writing of the Crown Estate Commissioners: see PARA 265 text and note 5 ante. As to the Crown Estate Commissioners see PARA 280 et seq post.

4 See the Land Registration Act 1925 s 97 (as amended); para 261 ante.

5 Crown Lands Act 1866 s 23 (repealed). The repeal of this provision does not affect powers exercisable under s 22 (repealed) by virtue of a lease granted before 27 July 1961: see the Crown Estate Act 1961 s 9(3), Sch 2 Pt II para 4(3).

6 See the Public Health Acts Amendment Act 1907 s 12.

UPDATE

265-266 Works on the foreshore, Protection of foreshore

Functions under the 1864 Act transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

267. Mines, quarries etc.

As general owner of the foreshore[1], except in Cornwall[2], the Crown enjoys the right to mines under it unless they have been granted away or otherwise alienated[3]. In so far as it does not interfere with public rights of navigation or other public rights, the right to work these mines may be granted by the Crown[4].

There are rights of access for persons entitled in right of or under the Crown to or to the management of any mines or quarries in or under the foreshore, or in or under any land immediately adjacent to it[5].

1 See PARA 242 et seq ante.

2 As to ownership of the foreshore in Cornwall see PARA 247 ante. As to mines under the foreshore in Cornwall see PARAS 268-269 post. As to mines in Cornwall see also PARAS 225-226 ante.

3 See PARA 223 ante. As to grants passing the foreshore see PARA 254 et seq ante. As to mines generally see MINES, MINERALS AND QUARRIES.

4 See *Lord Advocate v Wemyss* [1900] AC 48, HL; and PARA 223 ante.

5 See the Crown Lands Act 1866 ss 22-24 (repealed); and PARA 224 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/268. Mines and minerals under the foreshore in Cornwall.

268. Mines and minerals under the foreshore in Cornwall.

As between the monarch in right of the Crown[1] and the Duke of Cornwall[2] in right of the Duchy of Cornwall, all mines and minerals[3] lying under the seashore between high and low water marks[4] within the county of Cornwall[5] and under estuaries and tidal rivers and other places (below high water mark), even below low water mark, being in and part of the county (except mines and minerals in or under land below high water mark which is part and parcel of any manor belonging to the monarch in right of the Crown), were vested in the duke in right of the duchy by the Cornwall Submarine Mines Act 1858[6]. Under that Act mines and minerals lying below low water mark under the open sea adjacent to, but not being part of, the county of Cornwall remained vested in the monarch in right of the Crown as part of the soil and territorial possessions of the Crown[7].

1 As to the Crown's right to mines under the foreshore see PARA 223 ante.

2 Unless repugnant to the context, 'Duke of Cornwall' in the Cornwall Submarine Mines Act 1858 comprehends the personage for the time being entitled to the revenues of the duchy, including the monarch when there is no duke of Cornwall: s 7. As to the Duchy of Cornwall see PARAS 318-353 post.

3 Unless repugnant to the context, 'mines and minerals' in the Cornwall Submarine Mines Act 1858 includes all mines and minerals, quarries, veins or beds of stone, and all substrata of any other nature, and the ground and soil in, upon and under which they lie: s 8.

4 As to the extent of the foreshore or seashore see BOUNDARIES vol 4(1) (2002 Reissue) PARA 922; WATER AND WATERWAYS vol 100 (2009) PARA 34 et seq. See also note 6 infra.

5 The county of Cornwall as here defined is exclusive of any land added or taken away by the Counties (Detached Parts) Act 1844: Cornwall Submarine Mines Act 1858 s 8.

6 Ibid s 1 (repealed). The Cornwall Submarine Mines Act 1858 was based on a charter of Edward III: see PARA 318 post. The seaward limits of the county of Cornwall were settled between the Crown and the duchy by an award of Sir John Taylor Coleridge dated 28 October 1869, within the purview of the Cornwall Submarine Mines Act 1858. In general the area of land between high and low water, known as 'foreshore', around the coast of Cornwall, forms part of the duchy possessions. The majority of rivers in the county also form part of those possessions, and the award of 1869 had the effect of settling the boundaries of the seaward limits of these rivers and estuaries. The main rivers are the Camel, Gannel, Helford, Fal, Porthcuel, Foy, East and West Looe, Tresillian and Tamar, and all these have, of course, many creeks, which are also part of the duchy property. The seaward limits of the Isles of Scilly were also agreed under the award, and all the foreshore surrounding each island is duchy property, as also are certain areas of seabed (fundus) between the islands. The duchy also owns certain rivers in Devon, namely the Avon, Salcombe and Kingsbridge estuaries, the Dart and an area of seabed at Paignton.

7 Cornwall Submarine Mines Act 1858 s 2 (repealed).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(1) FORESHORE/269. Right of access to mines below low water mark in Cornwall.

269. Right of access to mines below low water mark in Cornwall.

The monarch and all persons entitled in right of the Crown (including his or their lessees or tenants) to, or to the management of, any of the mines and minerals[1] lying below low water mark under the open sea adjacent to, but not being part of, the county of Cornwall, may take or use, or pass through, over or under any land[2] of the Duchy of Cornwall[3] within the county of Cornwall for certain specified purposes[4] upon giving to the Duke of Cornwall[5] and to any other persons for the time being interested in the land so required two months' previous notice stating the nature of the facilities required[6].

In making use of these facilities no pit, shaft, adit, drift, level, drain, watercourse, pool or embankment may be sunk, driven or made so as to weaken, damage, injure or endanger any house or other building; nor may any tramroad, wagon or other way or any works or machinery be placed, laid, made or erected, nor any minerals be dressed or made merchantable, within 50 feet of any dwelling house or upon any garden or orchard or so as to interfere with any mining works or operations of the duke, his lessees or tenants[7].

The monarch or person making use of the facilities must also make and keep good and sufficient gates, rails, bars or posts in all places where necessary or proper to shut up or inclose any breach, gateway or opening made in any of the fences; and must make all conveniences necessary for the convenience and safety of the owners or occupiers of the land of which use is so made and other land adjoining it, and of the public, in order to prevent damage, inconvenience and trespasses upon the land by cattle or other animals[8].

1 For the meaning of 'mines and minerals' see PARA 268 note 3 ante.

2 Ie land either in the occupation of tenants under leases or agreements made after 2 August 1858, or in that of the Duke of Cornwall for the time being: Cornwall Submarine Mines Act 1858 s 3.

3 As to the Duchy of Cornwall see PARAS 318-353 post.

4 Ie in order to make or sink any pits, shafts, drifts, levels, drains, watercourses, pools or embankments; and to make, lay, place, use and repair any spoil banks, roads, ways, bridges and banks; and to make, erect and repair any lodges, sheds, steam and other engines, buildings, works and machinery in, under, upon, through, over or along the land; and to do all other acts necessary or convenient for working, searching for, digging, raising or carrying away, dressing or making merchantable the mines and minerals: Cornwall Submarine Mines Act 1858 s 3.

5 As to the Duke of Cornwall see PARA 268 note 2 ante.

6 Cornwall Submarine Mines Act 1858 s 3.

7 Ibid s 3.

8 Ibid s 4. For provisions as to compensation payable in respect of the use of those facilities and for any damage or injury occasioned by them, and for arbitration in respect of them, see ss 3-6.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/270. Meaning of 'wreck'.

(2) WRECK

270. Meaning of 'wreck'.

Wreck is one of the casual revenues[1] and may be granted as a franchise[2]. Wreck may be defined as property cast ashore within the ebb and flow of the tide after shipwreck[3]. Wreck can only be taken above the low water mark, and then only when the tide is out because nothing is wreck while it floats[4], but it becomes wreck as soon as it is fixed to the ground even though water is round it[5].

1 As to the casual revenues see PARA 216 et seq ante.

2 See PARA 272 et seq post.

3 *Sir Henry Constable's Case* (1601) 5 Co Rep 106a. See further SHIPPING AND MARITIME LAW vol 94 (2008) PARA 987.

4 Property remaining at sea after shipwreck does not comprise wreck in the strict sense but as adventurae maris is one of the droits of admiralty: *Hamilton v Davis* (1771) 5 Burr 2732 per Lord Mansfield CJ. See also Moore *History of the Foreshore* (3rd Edn, 1888) p 408 n 12. As to Admiralty droits see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 122, 139. For the distinction in time of war between Admiralty droits and droits of the Crown see PRIZE.

5 *R v Two Casks of Tallow* (1837) 3 Hag Adm 294; *R v Forty-Nine Casks of Brandy* (1836) 3 Hag Adm 257; *The Pauline* (1845) 2 Wm Rob 358; *Stackpoole v R*(1875) IR 9 Eq 619 (logs which have grounded and been marked by the owner of the right cease to be wreck if they again float out to sea).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/271. Right to wreck.

271. Right to wreck.

At common law by virtue of the prerogative[1], and by statute[2], the Crown is entitled to all unclaimed wreck, which includes flotsam, jetsam, ligan (or lagan) and derelict[3], found in the United Kingdom or in United Kingdom waters[4], except in places where the right has been granted to any other person[5]. The right does not extend to unclaimed wreck found outside United Kingdom territorial waters[6].

It seems that flotsam, jetsam and ligan, if taken on the high seas, belong to the first finder where the true owner cannot be known[7], subject to the statutory provisions relating to derelict, or fishing boats or fishing gear lost or abandoned at sea and either found or taken possession of within the territorial waters of the United Kingdom or found and taken possession of beyond those waters and brought within them[8].

In the county of Cornwall the right of wreck (namely flotsam, jetsam and ligan but not derelict) belongs either to the Duke of Cornwall or to a subject, except when the right may have escheated or become vested in the Crown by purchase[9]. In the counties palatine the right of wreck belonged originally to the Earls Palatine as part of the jura regalia[10]. In Wales the Lords Marchers, spiritual and temporal, who had wreck of the sea within their lordships before the English common law was extended to that country, have that franchise confirmed to them by statute as though it had been expressly granted by charter[11].

1 Under the early common law the Crown was entitled to all wrecks which came to shore: see the Statute Prerogativa Regis (temp incert) c 13 (repealed as to wreck by the Merchant Shipping Act 1894 s 745(1), Sch 22); Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 38, 40); Stuart Moore *History and Law of Foreshore* pp 1 et seq, 69 et seq, 139 et seq; *Palmer v Rouse* (1858) 3 H & N 505 at 510. The right was subsequently restricted to goods remaining unclaimed by the true owner within a year and a day: see 3 Edw 1 (Statute of Westminster the First) (1275) c 4 (repealed). As to the old law see also *Hamilton v Davis* (1771) 5 Burr 2732 at 2738; *Eyston v Studd* (1574) 2 Plowd 463 at 466.

Flotsam, jetsam, and ligan belonged to the Crown if the ship perished or the true owner did not appear to claim them, but only if found in the narrow seas adjoining the coast: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 107b; 1 Bl Com (14th Edn) 292; 2 Co Inst 167.

2 See the Merchant Shipping Act 1995 s 241. See also note 5 infra.

3 'Flotsam' is where a ship is wrecked and the goods float on the sea, 'jetsam' where they are cast into the sea in order to lighten a ship and sink, and 'ligan' where they are cast into the sea attached to a buoy to mark the spot; in all cases it is necessary that the ship should perish: see *Sir Henry Constable's Case* (1601) 5 Co Rep 106a; *The Gas Float Whitton No 2* [1896] P 42 at 51, CA (on appeal sub nom *Wells v Gas Float Whitton No 2 (Owners)* [1897] AC 337, HL). As to derelict see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 122; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 987.

4 For the meaning of 'United Kingdom' see PARA 207 note 8 ante. 'United Kingdom waters' means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom: see the Merchant Shipping Act 1995 s 313(2)(a); and SHIPPING AND MARITIME LAW vol 93 (2008) PARA 48.

5 See ibid ss 241, 255(1). See also SHIPPING AND MARITIME LAW vol 93 (2008) PARA 122; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1003. The right to wreck does not pass in a grant without express words being used for that purpose: *Scratton v Brown* (1825) 4 B & C 485 at 497 per Bayley J. As to the effect of grants of wreck see PARA 273 post.

6 *Pierce v Bemis, The Lusitania* [1986] QB 384, [1986] 1 All ER 1011.

7 This was the rule at common law, which, it appears, is still applicable: see Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 41).

8 Such fishing boats or fishing gear are to be treated as wreck: see the Merchant Shipping Act 1995 s 255(2); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 987. Much of the shipping legislation concerning wreck has been applied to aircraft: see AIR LAW vol 2 (2008) PARA 599.

9 Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 41). The Earl of Cornwall had the right by charter per totum comitatum (ie throughout the country except where it had at the time of the charter been granted out). For instances of those grants see Quo Warranto Rolls, Cornwall.

10 Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 41); Durham (County Palatine) Act 1836 s 1 (repealed in part); Durham County Palatine Act 1858 s 5 (repealed).

11 27 Hen 8 c 26 (Laws of Wales Act) (1535) s 30 (repealed); 1 & 2 Phil & Mar c 15 (Lord Marchers in Wales) (1554) s 6 (repealed).

UPDATE

271 Right to wreck

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/272. Franchise of wreck.

272. Franchise of wreck.

Generally, a subject can make title to wreck only by charter or prescription at common law[1]. Wreck, flotsam, jetsam and ligan[2] could be granted by the Crown in the form of a franchise, and may be claimed by prescription, but under the grant of a wreck by itself, flotsam, jetsam and ligan do not pass[3]. If the monarch's goods are wrecked they may be claimed at any time from the owner of the franchise[4].

1 Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 42); *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 107b. As to exceptions see PARA 271 ante. For the meaning of 'wreck' see PARA 270 ante.

It seems that flotsam may be claimed within high and low water mark, and the west country men prescribe to have wreck as far as they can see a Humber barrel; wreck above low water mark may be appurtenant to the foreshores forming part of the adjoining manor: *Sir Henry Constable's Case* supra at 107a-107b. A grant of the office of Admiral, with wreck and profits appertaining, does not pass wreck appurtenant to a manor in the king's possession: *Wiggon v Branthwait* (1699) 1 Ld Raym 473.

2 As to the meaning of 'flotsam', 'jetsam' and 'ligan' see PARA 271 note 3 ante.

3 *Sir Henry Constable's Case* (1601) 5 Co Rep 106a.

4 Hale's de Jure Maris, c 7 (Hargrave's Law Tracts 40); 2 Co Inst 168.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/273. Effect of grant of wreck.

273. Effect of grant of wreck.

A grant of a right to wreck does not itself confer any right to the soil over which it is to be taken, because prima facie the soil over which it is to be taken and the right itself belong to the Crown, and the Crown may grant both to one individual, or it may grant the soil without the wreck, or the wreck without the soil[1].

The grant carries with it a right to come and take the wreck[2], and a grantee has a special property in wrecks within his liberty from the time they become wrecked and to all goods washed ashore, even though they are subsequently shown by their owners claiming them within a year and a day not to be wreck of the sea, and he may maintain trespass against the captor even though the taking was before any seizure on his behalf[3].

1 *Dickens v Shaw* (1823) 1 LJOSKB 122 cited in Hall on Seashore, Appendix p 263. The observations of the judges in this case must be taken with reference to the particular circumstances of the case: *Calmady v Rowe* (1844) 6 CB 861 at 892 per Coltman J. Instances of grants of the soil and wreck to one person are very numerous (see Stuart Moore *History and Law of Foreshore* pp 48, 81, 470, 641); but examples of grants of wreck without the soil are not (see Stuart Moore *History and Law of Foreshore* p 648). See further PARA 254 ante.

2 *Dickens v Shaw* (1823) 1 LJOSKB 122 cited in Hall on Seashore, Appendix p 263; Stuart Moore *History and Law of Foreshore* p 453; *Anon* (1704) 6 Mod Rep 149.

3 *Dunwich Corpn v Sterry* (1831) 1 B & Ad 831. As to the position where the captor is the receiver of wreck or coastguard see SHIPPING AND MARITIME LAW.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/274. Right of grantee of wreck to foreshore.

274. Right of grantee of wreck to foreshore.

Although a grant of wreck by itself does not carry a right to the foreshore over which the wreck is to be gathered, there is a strong presumption that the foreshore was parcel of the manor if the grant is coupled with words which indicate that the grantee is the owner of the foreshore[1], or if the right is claimed by prescription infra manerium[2].

A grant of a manor with a right to wreck, or royal fish[3], raises a presumption that the Crown intended to grant the foreshore with the manor[4]. If by any means the right to wreck comes again to the Crown, it merges in the Crown, and if the Crown grants out the manor or land in respect of which the right was previously enjoyed the grant does not pass the wreck unless there are apt words in the grant to do so[5].

1 Eg 'wreccum maris infra manerium suum'.

2 *Sir John Constable's Case* (1575) and *Sir Henry Nevill's Case* (1286) cited in Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 26, 27). The following, among other expressions, support this presumption: 'infra dominium suum' (Close Roll, 5 Ric 2, ni 9; Coram Rege Roll, 25 Edw 3, m 49); 'ratione dominii nostri' (Inq Ad q d 5 Edw 3, 19); 'super terram suam' (Inq Ad q d 5 Edw 3, 70); 'per omnes terras suas super mare' (Charter Roll, 54 Hen 3, m 7, 1n); 'in omnibus dominicis suis' (Charter Roll, 54 Hen 3, m 8); 'super feodum, ecclesiae suae' (Quo Warranto Rolls (printed Edn) 348); 'super solum suum' (Coram Rege Roll, 13 Edw 2, m 41). For other expressions see Stuart Moore *History and Law of Foreshore*. See further PARA 254 ante.

3 As to royal fish see PARA 229 ante.

4 *Le Strange v Rowe* (1866) 4 F & F 1048 per Erle CJ; *R v Ellis* (1813) 1 M & S 652; Hale's de Jure Maris, c 6 (Hargrave's Law Tracts 26, 27).

5 *Duke of Northumberland v Houghton* (1870) LR 5 Exch 127; *Abbot of Strata Mercella Case* (1591) 9 Co Rep 24a; Cru Dig, tit 27, ss 91-100.

275. Prescription to wreck.

Title to wreck by prescription may be made by showing user by the taking of wreck when it happens, or the receipt of the proceeds of wreck after it has been sold by the Crown, allowances by justices in eyre of the right, judgments in actions in respect of the right[1], and payments made for burying dead bodies cast ashore[2].

1 *Biddulph v Arthur* (1755) 2 Wils 23 (allowances in eyre and judgment in trespass 400 years ago are not conclusive against a modern user for many years); *Tabot v Lewis* (1834) 6 C & P 603 (where ancient surveys of manors made by commissioners appointed by law were held not to be evidence of the lord's title to wreck, even though they are evidence as to the boundaries of the manor). See also *R v Shirland* (1314) YB 6 & 7 Edw 2 (Eyre of Kent), as printed in 8 Year Book Series (Selden Society Publications) 181.

2 See the Burial of Drowned Persons Act 1808 s 13 (repealed). See also PARA 257 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/3. FORESHORE AND WRECK/(2) WRECK/276. Duty of finder of wreck.

276. Duty of finder of wreck.

Where any person finds or takes possession of any wreck within the United Kingdom[1] or, having found or taken possession of any wreck outside the United Kingdom, brings it within the United Kingdom, then if he is the owner, he must give notice or, if he is not the owner, he must deliver the same, to the receiver of wreck[2], in the prescribed manner, subject to certain penalties if he fails to do so[3].

1 For the meaning of 'United Kingdom' see PARA 207 note 8 ante.

2 As to the receiver of wreck see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 988.

3 See the Merchant Shipping Act 1995 s 236; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 997. As to salvage see SHIPPING AND MARITIME LAW vol 93 (2008) PARAS 122-124; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 876 et seq.

UPDATE

276-277 Duty of finder of wreck, Sale of unclaimed wreck

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

277. Sale of unclaimed wreck.

Where no owner establishes a claim to wreck found in the United Kingdom[1] within one year after it came into the possession of the receiver of wreck[2], and where the wreck is not claimed by any person entitled to unclaimed wreck, it must be sold by the receiver[3]. After deducting the expenses of sale, other expenses, fees and salvage payments, the proceeds of sale are to be paid for the benefit of the Crown into the Consolidated Fund[4], except where wreck is claimed in right of the Duchy of Lancaster or the Duchy of Cornwall, when they are to be paid to the receivers general of the respective duchies or their deputies as part of the revenues of those duchies[5].

1 For the meaning of 'United Kingdom' see PARA 207 note 8 ante.

2 As to the receiver of wreck see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 988.

3 See the Merchant Shipping Act 1995 s 243; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1005.

4 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

5 See the Merchant Shipping Act 1995 s 243; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1005. As to the Duchy of Lancaster see PARAS 300-317 post; and as to the Duchy of Cornwall see PARAS 318-353 post. As to the receivers general see PARAS 305, 322 post.

UPDATE

276-277 Duty of finder of wreck, Sale of unclaimed wreck

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

4. CROWN ESTATE

278. The Crown Estate.

The Crown Estate comprises the lands and other rights including minerals and certain incorporeal hereditaments which the monarch enjoys in her political capacity in right of the Crown and which are now under the management of the Crown Estate Commissioners[1]. They comprise the demesne and waste land originally belonging to the Crown, or which came to the Crown afterwards by forfeiture or other means[2]; the land and rights relating to land which are enjoyed by virtue of the prerogative, such as foreshore, land formed by alluvion or left bare by diluvion and royal mines, and the land and rights which are acquired by virtue of the prerogatives of escheat and forfeiture[3]. The Crown Estate Commissioners have the management of the sea bed around the coast[4]; and where lands are brought within the realm, as when the territorial sea bed was extended from three miles to twelve[5], it seems that their duties extend with it.

Certain lands have been placed under the management of other aspects of the Crown, such as the Forestry Commission[6] or the Department of the Environment, Transport and the Regions[7]. Certain ancient fortresses and other lands are under the management of the Ministry of Defence[8] but if they become surplus to defence requirements it seems that they pass to the management of the Crown Estate Commissioners. The royal palaces and royal parks are not under the management of the Crown Estate Commissioners[9]. Houses in the royal parks or elsewhere which are not under their management may be placed under the management of the Crown Estate Commissioners; and arrangements may be made for any house forming part of the Crown Estate to be or cease to be at the disposal of the monarch[10].

1 Crown lands are a revenue-producing trust estate, essentially different from land acquired and maintained by the government for various uses such as bombing ranges, airfields, the erection of government offices and other public purposes; to avoid ambiguity Crown lands have been described as 'the Crown Estate': see *Report of the Committee on Crown Lands* (Cmd 9483) (1955) PARA 6. See also the Crown Estate Act 1961 s 1(1); and PARA 283 post.

As to the customary surrender of the hereditary land revenues at the beginning of each reign see PARA 207 ante. As to the devolution of the management of Crown lands see PARA 279 post.

As to the Crown Estate Commissioners see PARA 280 et seq post.

2 Demesne land is so defined by Blackstone: see 1 Bl Com (14th Edn) 286. As to waste land see *A-G v Hanmer* (1858) 31 LTOS 379.

3 As to Crown rights to foreshore see PARA 242 et seq ante; as to alluvion and diluvion see PARAS 263-264 ante; and as to royal mines see PARA 218 et seq ante. As to escheat see PARA 231 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARAS 6, 254. As to forfeiture see REAL PROPERTY vol 39(2) (Reissue) PARA 253. See also SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 480 et seq.

4 As to the right of the Crown to the sea bed see WATER AND WATERWAYS vol 100 (2009) PARA 32.

5 See the Territorial Sea Act 1987 s 1; and WATER AND WATERWAYS vol 100 (2009) PARA 31.

6 As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

7 As to the Department of the Environment, Transport and the Regions see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 452 et seq. See also OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519.

8 As to the Ministry of Defence see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 438 et seq. See also ARMED FORCES.

9 As to the royal palaces see PARA 365 post; and as to the royal parks see PARA 367 post.

10 See the Crown Lands Act 1927 s 13; and the Crown Estate Act 1961 s 5(5).

279. Devolution of the management of Crown lands.

Crown lands were placed under the management of the Commissioners of Woods, later called the Commissioners of Woods, Forests, Land Revenues, Works and Buildings, by the Crown Lands Act 1829[1]. That department was split up so that the First Commissioner of the Commissioners of Woods, Forests, Land Revenues, Works and Buildings became First Commissioner of Works and Public Buildings[2] and the other commissioners became the Commissioners of Woods, Forests and Land Revenues[3]. The Commissioners of Woods, Forests and Land Revenues were then renamed the Commissioners of Woods[4]. They were later renamed again as the Commissioners of Crown Lands[5] and certain lands were transferred to the management of the Forestry Commission[6]. Under the Crown Estate Act 1956[7], the Commissioners of Crown Lands became the Crown Estate Commissioners[8]; and the Crown Estate Commissioners were continued as a body corporate for all purposes by the Crown Estate Act 1961[9].

Functions of the Commissioners of Works and Public Buildings were transferred to the Minister of Works[10], who was renamed the Minister of Public Buildings and Works[11]. Functions of the Minister of Public Buildings and Works in relation to Crown lands were transferred to the Secretary of State for the Environment[12], and certain of his functions were then transferred to the Secretary of State for National Heritage[13], who is now the Secretary of State for Culture, Media and Sport[14]. The royal parks are now under the management of the Royal Parks Agency, which is an agency of the Department for Culture, Media and Sport[15]. Certain functions[16] may now be contracted out[17].

Jurisdiction over the foreshore was transferred from the Commissioners of Woods to the Board of Trade[18] and was subsequently exercised in turn by the Minister of Shipping, the Minister of War Transport, and the Minister of Transport[19]. As from 1 April 1950[20] the management of so much of the Crown foreshore as immediately before that date was under the management of the Minister of Transport, and all property, rights and liabilities held or enjoyed by or incumbent on the Minister of Transport in connection with such part of the Crown foreshore, were transferred to the Commissioners of Crown Lands[21], now the Crown Estate Commissioners[22], in whom the management of the Crown foreshore is now vested[23].

1 See the Crown Lands Act 1829 s 8 (repealed).

2 As to the other Commissioners of Works and Public Buildings see the Crown Lands Act 1851 s 15 (amended by the Statute Law Revision Act 1892; and the Secretary of State for the Environment Order 1970, SI 1970/1681, art 5(3), Sch 4). As to duties and powers of the Commissioners of Works and Public Buildings see the Crown Lands Act 1851 s 21 (amended by the Statute Law Revision Act 1892). As to the devolution of the functions of the Commissioners of Works and Public Buildings see the text and notes 10-17 infra.

3 See the Crown Lands Act 1851 s 1 (repealed).

4 See the Crown Lands Act 1885 s 2 (repealed).

5 See the Forestry (Title of Commissioners of Woods) Order 1924, SR & O 1924/1370.

6 See the Forestry (Transfer of Woods) Act 1923 s 1 (repealed). See also the Forestry (Transfer of Woods) Order 1924, SI 1924/386; the Forestry (Transfer of Woods) Order 1926, SI 1926/677; and FORESTRY vol 52 (2009) PARA 1. As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

7 See the Crown Estate Act 1956 s 1 (repealed).

8 As to the Crown Estate Commissioners see PARA 280 et seq post.

9 See the Crown Estate Act 1961 s 1(1); and PARA 281 post.

10 See the Ministry of Works (Transfer of Powers) (No 1) Order 1945, SR & O 1945/991.

11 See the Minister of Works (Change of Style and Title) Order 1962, SI 1962/1549.

12 See the Secretary of State for the Environment Order 1970, SI 1970/1681. The Secretary of State for the Environment has now become the Secretary of State for the Environment, Transport and the Regions: see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 452 et seq; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519.

13 See the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311.

14 See the Secretary of State for Culture, Media and Sport Order 1997, SI 1997/1744. Powers to transfer the management of houses in any of the royal parks to the Crown Estate Commissioners (under the Crown Lands Act 1927 s 13) and of part of Regent's Park from the commissioners to the Secretary of State (under the Crown Lands Act 1936 s 9) are preserved by the Crown Estate Act 1961 s 9(3), Sch 2 Pt I para 1(1)(b), (c).

15 See PARA 367 post.

16 Ie functions now vested in the Secretary of State for Culture, Media and Sport under the Crown Lands Act 1851 s 21 (as amended: see note 2 supra).

17 See the Contracting Out (Functions in relation to the Management of Crown Lands) Order 1998, SI 1998/215.

18 See the Crown Lands Act 1866 s 7 (repealed). As to the Board of Trade see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505; TRADE AND INDUSTRY vol 97 (2010) PARA 802.

The original transfer of jurisdiction contained a more specific description of the property whose management was transferred, and contained qualifications by way of exception, with the result that a certain amount of jurisdiction remained in the Commissioners of Woods. The Crown Estate Commissioners are successors to the Commissioners of Woods (see the text and notes 1-9 supra), so that jurisdiction over what was retained and what was transferred (which is now the responsibility of the Crown Estate Commissioners: see the text and notes 19-22 infra) is now reunited.

19 The functions exercisable by the Board of Trade in relation to foreshore and tidal land and the protection of the coast against inroads of the sea were transferred successively to the Minister of Shipping by the Minister of Shipping (Transfer of Functions) Order 1939, SR & O 1939/1470, to the Minister of War Transport by the Ministers of the Crown (Minister of War Transport) Order 1941, SR & O 1941/654, and to the Minister of Transport by the Minister of War Transport (Dissolution) Order 1946, SR & O 1946/375.

20 This was the appointed day under the Coast Protection Act 1949 s 40 (repealed): see the Management of Crown Foreshore (Date of Transfer) Order 1950, SI 1950/267 (spent).

21 See the Coast Protection Act 1949 ss 37, 38 (both repealed).

22 See the text and notes 7-9 supra.

23 See the Crown Estate Act 1961 s 1(1), (2). Certain functions under the Coast Protection Act 1949 (see WATER AND WATERWAYS vol 101 (2009) PARA 502 et seq) have been transferred to the Minister of Agriculture, Fisheries and Food: see PARA 262 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 96.

280. The Crown Estate Commissioners.

The Crown Estate Commissioners[1] are such persons, not exceeding eight in number, as the monarch may from time to time determine[2]. They are appointed by the monarch by warrant under the royal sign manual[3]. They hold and vacate their offices in accordance with the terms of their warrants, and on vacating office are eligible for reappointment[4]. Their salaries are determined by the Minister for the Civil Service[5].

One commissioner is appointed First Crown Estate Commissioner and acts as chairman; another may be appointed Second Crown Estate Commissioner to act as deputy chairman[6].

1 As to the transfer of functions in relation to the management of Crown lands see PARA 279 ante.

2 Crown Estate Act 1961 s 1(7), Sch 1 para 1(1).

3 Ibid Sch 1 para 1(4). As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

4 Ibid Sch 1 para 1(5). See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 902.

5 See ibid Sch 1 para 1(6). Schedule 1 para 1(6) refers to the Treasury, but these functions were transferred to the Minister for the Civil Service: see the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995, SI 1995/269, arts 3, 5(2), Schedule para 1. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 549.

6 Crown Estate Act 1961 Sch 1 para 1(2), (3).

281. Incorporation and officers.

The Crown Estate Commissioners are a body corporate for all purposes[1]. They have power to regulate their own procedure, and at their meetings the quorum is such as they may from time to time determine[2]. The commissioners have power appoint officers and servants[3]. Salaries and expenses, including remuneration of officers and servants so appointed, are paid out of money provided by Parliament[4]. The commissioners and their officers and servants are disqualified for membership of the House of Commons[5]. The Crown Estate Office is subject to the supervision of the Parliamentary Commissioner for Administration[6].

1 See the Crown Estate Act 1961 s 1(1).

2 Ibid s 1(7), Sch 1 para 3.

3 See ibid Sch 1 para 4. This does not affect customary rights to appoint to such offices as the Stewardship of the Chiltern Hundreds: see the Crown Estate Act 1961 s 9(1).

4 See ibid Sch 1 para 5.

5 See the House of Commons Disqualification Act 1975 s 1, Sch 1 Pts II, III; and PARLIAMENT vol 78 (2010) PARA 908.

6 Parliamentary Commissioner Act 1967 s 4(1), Sch 2 (both substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1), (2), Sch 1). As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

UPDATE

281 Incorporation and officers

NOTE 6--1967 Act Sch 2 now as further substituted: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

282. Seal and documents.

The Crown Estate Commissioners have an official seal, which is to be officially and judicially noticed[1]. Any document to be signed on their behalf must be signed by a commissioner, or by a secretary of the commissioners' office, or by a person authorised by them to act on behalf of a secretary[2], and their seal is to be similarly authenticated[3]. Unless the contrary is proved, any document purporting to be sealed or signed in accordance with these provisions must be deemed to have been duly sealed or signed without proof of the official character or handwriting of the person appearing to have authenticated the seal or signed the document[4]. The Documentary Evidence Acts 1868 and 1882[5] apply to orders and regulations made by the commissioners[6].

1 Crown Estate Act 1961 s 1(7), Sch 1 para 2(1).

2 Ibid Sch 1 para 2(3).

3 Ibid Sch 1 para 2(2).

4 Ibid Sch 1 para 2(4).

5 Ie the Documentary Evidence Act 1868 and the Documentary Evidence Act 1882: see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894.

6 Crown Estate Act 1961 Sch 1 para 6.

283. Management of the Crown Estate.

The Crown Estate Commissioners are charged on behalf of the Crown with the function of managing and turning to account land and other property, rights and interests, and of holding such of the property, rights and interests under their management as for any reason cannot be vested in the Crown or can more conveniently be vested in them, the property, rights and interests under their management being known as the Crown Estate[1].

1 Crown Estate Act 1961 s 1(1). See also PARA 278 ante. The Crown Estate Act 1961 does not affect any questions as to the property, rights or interests to be placed under the management of the commissioners: see s 9(3), Sch 2 Pt II para 3(1). Leaseholds or other interests in land held in trust for the Crown by other persons vested in the commissioners by virtue of s 9(2) (repealed).

284. Commissioners' powers and duties.

For the purpose of managing and improving the Crown Estate[1] or any part of it the Crown Estate Commissioners have authority to do on the Crown's behalf all such acts as belong to the Crown's right of ownership, and to execute and do in the name of the monarch all instruments and things proper for the effective exercise of their powers[2]. While maintaining the Crown Estate as an estate in land, with the proportion of cash or investments which seems to be required, it is their general duty to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management[3].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 Crown Estate Act 1961 s 1(2). The commissioners are free from any restraint on alienation imposed on the Crown by the Crown Lands Act 1702 s 5 or by any other enactment, whether general or particular: Crown Estate Act 1961 s 1(2). The consequence is that lands under the management of the commissioners can be freely managed, subject to statutory restrictions such as the limit of leases to terms not exceeding 150 years (see PARA 290 post); but lands not under their management or under the management of some other body remain subject to the Crown Lands Act 1702. As to the restraint on alienation imposed by the Crown Lands Act 1702 s 5 see PARA 205 ante.

3 Crown Estate Act 1961 s 1(3). Special provisions relate to the Windsor Estate, under which, while aiming at maintaining its character as a royal park and forest, the commissioners are given wide powers of management eg for providing dwellings for persons employed on the estate or for allowing the public to have access to it for purposes of recreation: see s 5.

285. Ministerial control.

The Crown Estate Commissioners must comply with any written directions as to the discharge of their functions given to them by the Chancellor of the Exchequer[1]. However, the commissioners must be consulted beforehand and the Chancellor must have regard to the commissioners' general duty[2].

1 See the Crown Estate Act 1961 s 1(4). As to the Chancellor of the Exchequer see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 514.

Before the passing of the Crown Estate Act 1956 (repealed), prior Treasury approval was required for many transactions. The commissioners are now free to act without that approval, but subject to directions under the Crown Estate Act 1961 s 1(4), and subject to an obligation to furnish accounts and such estimates of future receipts and expenditure as the Treasury may require: see PARA 287 post. In practice, the commissioners provide the Treasury annually with a forward programme of their projected activities on both capital and revenue account, together with supporting estimates of expenditure and revenue, and a statement of the general policy which they propose to pursue in the administration of the Crown Estate. As to publication of directions see PARA 286 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 See ibid s 1(4). As to the commissioners' general duty see s 1(3); and PARA 284 ante.

286. Annual report.

As soon as may be after the end of each financial year, the Crown Estate Commissioners must make a report to the monarch on the performance of their functions in that year and must lay a copy before each House of Parliament[1]. The report must set out any directions given to the commissioners during the year by the Chancellor of the Exchequer or the Secretary of State for Scotland[2], unless the Chancellor of the Exchequer or the Secretary of State has notified the commissioners that any direction should be omitted in the interests of national security[3].

1 See the Crown Estate Act 1961 s 2(1), (7).

2 See PARA 285 ante. As to the Chancellor of the Exchequer see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 514; and as to the Secretary of State for Scotland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 64-65, 519.

3 Crown Estate Act 1961 s 2(2).

287. Accounts.

The Crown Estate Commissioners must keep proper accounts and other records in relation to them, and must furnish the Treasury[1] with such returns, accounts and other information about the Crown Estate[2] and their activities and with such estimates of future receipts and expenditure as the Treasury may from time to time require[3]. For each financial year the commissioners must prepare statements of account in such form as the Treasury may direct, and transmit them not later than the end of November in the following financial year to the Comptroller and Auditor General[4], who must examine and certify them and lay copies of the accounts together with his report on them before each House of Parliament[5].

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

3 Crown Estate Act 1961 s 2(3). In their accounts they must distinguish between capital and income and make any proper adjustments between capital account and income account, including provisions, where appropriate, for recouping capital expenditure out of income, but so that (1) any sum received by way of premium on the grant of a lease must be carried to income account if the lease is for 30 years or less, and to capital account if it is for more; and (2) the gross annual income received and the expenses incurred from or in connection with mining leases or the working of mines or minerals must be carried or charged as to one half to capital account and as to one half to income account: s 2(4).

4 See ibid s 2(5), (7). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 724 et seq.

5 See ibid s 2(6).

288. Formalities.

Any transaction entered into by the Crown Estate Commissioners in the exercise of their powers, including an acquisition for the Crown Estate[1], may be carried out by the same means and with the same formalities, and any deed or other instrument entered into by them is to be construed in the same manner, and is to be registrable, as if they were acting on behalf of a subject of the Crown[2].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 Crown Estate Act 1961 s 1(6). This subjects conveyancing to the provisions of the Law of Property Act 1925, which binds the Crown: see s 208(3); and PARA 209 ante. No estates, interests or charges in or over Crown land can be conveyed or created except those that are capable of subsisting or being conveyed or created under the Law of Property Act 1925: see s 208(2). As to the provisions of the Law of Property Act 1925 generally see REAL PROPERTY. However, certain restrictions are not binding: see eg para 291 post.

An advowson is not to be taken to be comprised in any general words in a grant or agreement for a grant of land: Crown Estate Act 1961 s 1(6) proviso. See ECCLESIASTICAL LAW.

The Office of Land Revenue Records and Enrolments was abolished with the repeal of the Crown Lands Act 1832 (see the Crown Estate Act 1961 s 9(4), Sch 3 Pt II), and the Public Record Office took its place. As to public records see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 835 et seq. For the purpose of any enactment passed before, and not repealed by, the Crown Estate Act 1961, or of any instrument having effect under such an enactment, enrolment or deposit in the Public Record Office takes the place of enrolment or deposit in the abolished office: s 9(3), Sch 2 Pt II para 5(1). In relation to documents executed before 27 July 1961, any enactment repealed by the Crown Estate Act 1961 continues to apply in so far as it relates to the effect of enrolment or deposit in the Office of Land Revenue Records and Enrolments, or to the operation of any document evidencing or purporting to evidence enrolment or deposit in that office or the contents of documents so enrolled or deposited, the Public Record Office being substituted as above: see Sch 2 Pt II para 5(2). All these documents and those previously enrolled or deposited in the abolished office are treated as public records for the purposes of the Public Records Act 1958 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Crown Estate Act 1961 Sch 2 Pt II para 5(3). Enrolment of documents is no longer necessary.

289. Validity of transactions.

The validity of transactions entered into by the Crown Estate Commissioners must not be called into question on any suggestion of their not having acted in accordance with the provisions of the Crown Estate Act 1961 regulating the exercise of their powers, or of their having otherwise acted in excess of their authority; nor is any person dealing with them concerned to inquire as to the extent of their authority or the observance of any restrictions on the exercise of their powers[1].

1 Crown Estate Act 1961 s 1(5) (reproducing in substance the provisions of the Crown Lands Act 1829 ss 73, 74 (both repealed)). It seems that the Crown Lands Act 1702 s 7 (amended by the Post Office Act 1969 s 137, Sch 8 Pt I) (which makes dispositions contrary to the Crown Lands Act 1702 void without proceedings to determine them) is superseded by the Crown Estate Act 1961 in relation to lands under the management of the Crown Estate Commissioners. However, if any lands pass from their management to that of another Crown authority, the Crown Lands Act 1702 will again apply unless there is provision to the contrary.

290. Sales and leases.

The Crown Estate Commissioners must not sell, lease or otherwise dispose of any land of the Crown Estate[1], or any right or privilege over or in relation to that land, except for the best consideration in money or money's worth which in their opinion can reasonably be obtained, having regard to all the circumstances, but excluding any element of monopoly value attributable to the extent of the Crown's ownership of comparable land[2].

They must not grant a lease of land of the Crown Estate, or of any right or privilege over or in relation to that land, for a term ending more than 150 years from the date of the lease, and every such lease granted by them must be made to take effect in possession not later than 12 months after its date or in reversion after an existing lease having at that date not more than 21 years to run[3]. They must not contract, by the grant of an option or otherwise, to convey or create any estate or interest in, or any right or privilege over or in relation to, land of the Crown Estate at a date more than ten years after the date of the contract[4].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 Crown Estate Act 1961 s 3(1). See also note 3 infra. It was intended to give the commissioners as wide powers of management as possible, and in particular to enable them to grant leases containing provisions for a periodic review of the rent reserved, a matter of some doubt before the Act was passed. Section 3(1) does not restrict their discretion as to the parcels in which any land is to be disposed of or as to the apportionment of the consideration, or the reservation of any right or privilege over or in relation to any land disposed of, or to dispose of land subject to covenants, conditions or restrictions: see s 3(6). In determining whether the consideration is the best that can reasonably be obtained they may take into account any benefit conferred on the Crown Estate by improvements or works executed on the land without cost to the Crown Estate: see s 3(6). As to gifts see PARA 294 post.

3 See ibid s 3(2) (amended by the Miscellaneous Financial Provisions Act 1983 s 5). See also the Law of Property Act 1925 ss 149(3), 208; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 106; REAL PROPERTY vol 39(2) (Reissue) PARA 102. The restrictions contained in the Crown Estate Act 1961 s 3(1), (2) (as amended) do not apply to any exercise of the commissioners' powers for the purpose of complying with an obligation enforceable against the Crown or the commissioners, or for the purpose of confirming any lease or grant which is void or voidable: s 3(7). Section 3(2) (as amended) does not apply where the lease is granted by way of extension of a long tenancy at a low rent and it appears to the commissioners that if the tenancy were not a tenancy from the Crown there would be a right to an extended or new lease: see the Leasehold Reform Act 1967 s 33(3); the Leasehold Reform, Housing and Urban Development Act 1993 s 94(3) (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1534.

4 Crown Estate Act 1961 s 3(3). This does not apply where the consideration for the conveyance or creation of the estate or interest etc is to be determined at the time it is conveyed or created in a manner in the commissioners' opinion calculated to secure the best consideration in money or money's worth which can then reasonably be obtained: s 3(3) proviso.

291. Right of re-entry.

Where the Crown Estate Commissioners dispose of land subject to restrictions on user, then notwithstanding any enactment or rule of law relating to perpetuities[1], the restrictions may be made enforceable by a right of re-entry exercisable on behalf of the monarch on a breach occurring at any distance of time[2].

1 As to perpetuities see PERPETUITIES AND ACCUMULATIONS.

2 Crown Estate Act 1961 s 3(8). The difference between the rules as to rights of re-entry in relation to the Crown and to subjects in freehold land may arise from the superior tenurial interest of the Crown: see PARAS 201, 215 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/4. CROWN ESTATE/292. Acceptance of new leases.

292. Acceptance of new leases.

Where any person in whom property belonging to the Crown is vested under a lease accepts a new lease of the property, to begin either presently or at any time during the continuance of the existing lease, then as from the commencement of the term of the new lease, but subject to anything to the contrary expressed in the new lease, the acceptance of the new lease operates as a surrender of the existing lease as to so much of the property demised by it as is demised by the new lease, but without prejudice to any rights or liabilities existing at the date of the surrender[1].

1 See the Crown Lands Act 1894 s 6; and the Crown Estate Act 1961 s 9(3), Sch 2 Pt I para 2(d).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/4. CROWN ESTATE/293. Covenants for title.

293. Covenants for title.

A purchaser from the Crown is not entitled to covenants for title[1]; and a right of light cannot be established against the Crown Estate Commissioners or against their lessee[2].

1 Sugden *Vendors and Purchasers of Estates* (14th Edn) p 575. As to covenants and the Crown see PARA 212 ante. The legislation for implied covenants binds the Crown: see the Law of Property (Miscellaneous Provisions) Act 1994 s 20; and REAL PROPERTY vol 39(2) (Reissue) PARA 243. As to the general practice affecting vendors and purchasers of Crown land see SALE OF LAND.

2 *Wheaton v Maple & Co* [1893] 3 Ch 48, CA.

294. Gifts.

For the development, improvement or general benefit of any land of the Crown Estate[1], the Crown Estate Commissioners, with the consent of the monarch signified under the royal sign manual[2], may dispose of land, or of a right or privilege over or in relation to land, without consideration or for such consideration as they think fit, where the land is to be used and occupied, or the right or privilege is to be enjoyed:

1 (1) for the purposes of any public or local authority, or for the purposes of any authority or person exercising powers conferred by or under any enactment for the supply of water[3]; or

2 (2) for the construction, enlargement, improvement or maintenance of any road, dock, sea wall, embankment, drain, watercourse or reservoir[4]; or

3 (3) for providing, enlarging or improving a place of religious worship, residence for a minister of religion, school, library, reading room or literary or scientific institution, or any communal facilities for recreation, or the amenities or means of access to that land or building[5]; or

4 (4) for any other public or charitable purpose in connection with any land of the Crown estate, or tending to the welfare of persons residing or employed on that land[6].

The commissioners may, out of the income of the Crown Estate, make contributions in money for any religious or educational purpose connected with land of the Crown Estate, or for other purposes tending to the welfare of persons residing or employed on any such land[7].

1 Crown Estate Act 1961 s 4(1). As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

Section 3(1) (see PARA 290 ante) does not apply to any exercise of the commissioners' powers under the New Parishes Measure 1943 s 14 (as amended), which relates to gifts or grants of land for the sites of churches etc (see the Crown Estate Act 1961 s 4(3)), and consequently those gifts or grants may be made even though they are not for the development, improvement or general benefit of the land of the Crown Estate: see ECCLESIASTICAL LAW. See also the Gifts for Churches Act 1811 s 1 (as amended), which empowers the Crown to vest land in persons, bodies politic or corporate, for erecting, rebuilding etc a church or chapel or mansion house for the residence of a minister, or for a churchyard etc; but as the area to be comprised in any one grant is restricted, use is not likely to be made of this power. On the other hand, the Parsonages Act 1865 s 4 confers a similar but unlimited power: see further ECCLESIASTICAL LAW. Certain statutes have from time to time conferred powers of gift in relation to Crown land. In many cases this will have been subject to a reverter in the case of land ceasing to be used for the purpose for which it was given. As to the Reverter of Sites Act 1987 see CHARITIES vol 8 (2010) PARA 70 et seq.

2 As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

3 Crown Estate Act 1961 s 4(1)(a).

4 Ibid s 4(1)(b).

5 Ibid s 4(1)(c).

6 Ibid s 4(1)(d).

7 Ibid s 4(2).

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/4. CROWN ESTATE/295. Land open to the public.

295. Land open to the public.

The Crown Estate Commissioners may make such regulations to be observed by persons using land of the Crown Estate[1] to which the public are for the time being allowed access as the commissioners consider necessary for securing proper management of that land and the preservation of order and prevention of abuses on it[2].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 Crown Estate Act 1961 s 6(1). The power is exercisable by statutory instrument, a draft of which must be laid before Parliament: s 6(4). While regulations are in force as respects any land in Great Britain (see PARA 207 note 8 ante), the Parks Regulation Act 1872 (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561 et seq) applies to that land, any reference to regulations being construed as referring to the regulations under the Crown Estate Act 1961 s 6 (as amended), and any reference to the Minister of Works (now the Secretary of State for the Environment, Transport and the Regions: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519) as referring to the commissioners: s 6(2). Park keepers have the same powers and duties as the police in the district in which the park is situated: see the Parks Regulation Act 1872 s 7 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 563. Failure to comply with, or acts in contravention of, regulations are punishable on summary conviction with a fine not exceeding level 1 on the standard scale: Crown Estate Act 1961 s 6(3) (amended by the Criminal Justice Act 1982 ss 38, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144. Regulations in force before 27 July 1961 under the Crown Lands Act 1936 have effect as regulations under the Crown Estate Act 1961 s 6 (as amended): s 9(3), Sch 2 Pt II para 4(2). Such regulations, being of a local nature, are outside the scope of this work.

UPDATE

295 Land open to the public

NOTE 2--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

296. Investment.

Moneys forming part of the Crown Estate[1] which are to be invested must be invested either (1) in the name of the Crown Estate Commissioners on real, leasehold or heritable securities in the United Kingdom[2], but excluding the security of any lease or leasehold property where the lease has less than 60 years to run; or (2) in the name of the National Debt Commissioners in any securities or other investments for the time being authorised as investments for ordinary deposits with the National Savings Bank[3].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 For the meaning of 'United Kingdom' see PARA 207 note 8 ante.

3 Crown Estate Act 1961 s 3(4) (amended by the Trustee Savings Banks Act 1976 s 36(1), Sch 5 para 3). As to the National Debt Commissioners see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1332; and as to ordinary deposits in the National Savings Bank see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 813. The provision concerning investment does not apply to the application of income, proceeds of sale or other money derived from the Crown Estate, otherwise than in the course of its management or for the purpose of arrangements concerning houses at the disposal of the monarch: Crown Estate Act 1961 s 9(3), Sch 2 Pt II para 3(1).

297. Borrowing.

The Crown Estate Commissioners' powers of management include power to borrow money, on security or otherwise, for the purpose of discharging or redeeming incumbrances affecting any part of the Crown Estate[1], but not for other purposes[2].

1 As to the Crown Estate see PARA 278 ante. See also PARA 283 ante.

2 Crown Estate Act 1961 s 3(5). The restrictions contained in s 3(1), (2), (3) (s 3(2) as amended) (see PARA 290 ante) do not apply to any security for the principal or interest of money so borrowed: s 3(5).

298. The county palatine of Durham.

The jura regalia or prerogative rights of the Crown relating to property within the county palatine of Durham, which were formerly attached to the bishopric of Durham as incident to the royalty or franchise of the county palatine[1], were separated from the county palatine and revested in the Crown as from 21 June 1836[2]; and as from 23 July 1858 all forfeitures of land or goods for treason or otherwise, and all mines of gold and silver[3], treasure trove[4], escheats[5], fines and amercements, and all jura regalia of whatever nature or kind (other than any estate and interest in the beds and shores of navigable rivers so far as the tide flows, and in the shore of the sea, and any enclosures, embankments and encroachments from them or upon them respectively[6]), which were vested in the monarch in right of the county palatine of Durham[7], became revested in the monarch in right of the Crown, and were exercisable and recoverable, and the proceeds from them applied accordingly[8].

1 Durham was a county palatine by prescription or immemorial custom at least as old as the Norman Conquest: 1 Bl Com (14th Edn) 116.

2 Durham (County Palatine) Act 1836 s 1 (repealed). The rights then transferred were vested in the Crown as a franchise separate from the Crown, but were subsequently held in right of the Crown under the Durham County Palatine Act 1858 s 5 (repealed) (see the text and note 8 infra).

3 As to gold and silver mines see PARA 218 ante.

4 As to treasure trove see PARA 373 post; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq.

5 As to escheat see PARA 231 et seq ante.

6 Special provision is made as to the foreshore in Durham: see PARA 249 ante.

7 As to what is comprised in the county palatine of Durham see PARA 249 note 4 ante.

8 Durham County Palatine Act 1858 s 5 (repealed). As to the surrender of the hereditary revenues see PARA 207 ante.

299. Palatinate officers.

The revesting of rights in the Crown[1] did not affect the right of any person holding a patent of any office to receive any fee or stipend granted by that patent out of the revenues of the bishopric of Durham, which continue to be subject to all the same fees and stipends in respect of any office in the county of Durham as they were subject to before 21 June 1836[2].

1 See PARA 298 ante.

2 Durham (County Palatine) Act 1836 s 6 (repealed). As to the Attorney General and Solicitor General of the county palatine of Durham see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 539.

5. DUCHY OF LANCASTER

300. Duchy and county palatine of Lancaster.

The Duchy of Lancaster comprises an honour or complex of estates and jurisdiction which originally formed the patrimony of the earls and dukes of Lancaster[1]. It includes the county palatine of Lancaster which was conferred by Henry III in 1267 upon his son Edmund, Earl of Lancaster[2], and was by Edward III by a charter of 1351 invested with the full jura regalia, or prerogative rights, of a county palatine[3].

After various subsequent charters and devolutions of title[4] the duchy, of which the county palatine formed parcel[5], became vested in Henry VII, who, by charter having the authority of Parliament[6], resettled it upon himself and his heirs as separate from the Crown of England with the same officers and the same seals, and in as large and ample a manner as Henry IV, Henry V and Henry VI had it[7].

In virtue of this charter the duchy has been held to be vested in the monarch in her natural capacity, and not in her political capacity in right of the Crown[8], though this appears to have been doubted[9]. The revenues of the duchy are retained by the monarch for her personal use[10], except those derived from certain liberties of the duchy outside the county palatine[11].

1 1 Somerville's History of the Duchy of Lancaster p X.

2 *A-G of the Duchy of Lancaster v Duke of Devonshire*(1884) 14 QBD 195 at 197; 1 Somerville's History of the Duchy of Lancaster p 8. For the charter itself see Hardy *Charters of the Duchy of Lancaster* p 1.

3 Hardy *Charters of the Duchy of Lancaster* p 102. The charter grants the jura regalia as freely and fully as the Earl of Chester had them in the county palatine of Chester (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307). Under this grant the right to bona vacantia has been held to pass: *Dyke v Walford* (1848) 5 Moo PCC 434.

4 By charters of 1361, 1362 and 1377 the Duchy and county palatine of Lancaster were conferred upon John of Gaunt, fourth son of Edward III (Hardy *Charters of the Duchy of Lancaster* pp 12, 17, 33), and from him descended to his son Henry IV, who on his accession in 1399, by charter having the authority of Parliament, settled it upon himself and his heirs separate from the Crown of England (Hardy *Charters of the Duchy of Lancaster* p 102; *A-G of the Duchy of Lancaster v Duke of Devonshire*(1884) 14 QBD 195 at 197; 4 Co Inst 205). The reason for this is said to have been the doubtful title of Henry IV to the throne (*A-G of the Duchy of Lancaster v Duke of Devonshire* supra at 197); but he directed the same jura regalia to be exercised as formerly and the ancient officers to be continued (Hardy *Charters of the Duchy of Lancaster* p 138). In 1461 Edward IV caused fresh charters to be made declaring Henry VI attainted and his possessions forfeited, and assuring the duchy to himself and his heirs, kings of England, it being also provided that the county of Lancaster should be a county palatine and form parcel of the duchy, and that there should be a seal of the duchy and of the county palatine, and a Chancellor, officers and councillors of the duchy, and a Chancellor, judge and officers of the county palatine (Hardy *Charters of the Duchy of Lancaster* pp 279, 281-284; 4 Co Inst 206; *A-G of the Duchy of Lancaster v Duke of Devonshire* supra at 197). By these charters the duchy and county palatine were reunited in possession with the Crown, and the jura regalia were only prevented from merging by their special provisions. See also Somerville's History of the Duchy of Lancaster.

5 See note 4 supra.

6 A charter made with the authority of Parliament is equivalent to an Act of Parliament: see *The Prince's Case* (1606) 8 Co Rep 1a at 28a-28b.

7 Hardy *Charters of the Duchy of Lancaster* pp 341, 346; 4 Co Inst 206; *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 220.

8 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 222 (decided with reference to Henry VII); Somerville's History of the Duchy of Lancaster pp 145-151.

9 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 221. But see *Alcock v Cooke* (1829) 5 Bing 340 at 352, 354, where the monarch's right to the duchy as an estate separate from the Crown estate was discussed.

10 See PARA 356 post. This seems to be by reason of Henry VII's charter, for, under Edward IV's charter, the Crown had the duchy in right of the Crown (see the references in note 4 supra). It will be noted that the Act of Settlement (1700) passes to the present royal line all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities belonging or appertaining to the Crown and regal government; if the decision in the *Duchy of Lancaster Case* (1561) 1 Plowd 212 is correct the monarch would appear to be entitled as monarch, but in her natural capacity and not in her political capacity.

11 See PARA 302 post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/5. DUCHY OF LANCASTER/301. Prerogative rights.

301. Prerogative rights.

The royal prerogatives[1] extend, in general, to the lands of the Duchy of Lancaster as they do to land held in right of the Crown. Thus the non-recital of a prior grant for life invalidates a subsequent grant of duchy land[2], and three usurpations of an advowson in the duchy will not put the Crown out of its right[3]; nor are grants of duchy land void by reason of the minority of the monarch[4].

In the absence of express words or necessary intendment the Crown in right of the duchy is not bound by statute, but this rule is subject to the usual exceptions[5].

1 As to the royal prerogatives see PARA 216 et seq ante. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 *Alcock v Cooke* (1829) 5 Bing 340. As to non-recitals in royal grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 864.

3 *R v Archbishop of York and Buck* (1591) Cro Eliz 240 at 241.

4 See *Duchy of Lancaster Case* (1561) 1 Plowd 212.

5 *A-G of the Duchy of Lancaster v Moresby* [1919] WN 69. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 384. Accordingly, the tax immunity of the Crown extends to the Duchy of Lancaster: see the *Report of the Select Committee on the Civil List* (HC Paper (1971-72) no 29) at 108. As to the voluntary payment of tax by the royal family see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 82.

302. Extent of the Duchy of Lancaster.

Though the county palatine[1] is incorporated with the Duchy of Lancaster by charter[2], the duchy as an honour is distinct from the county palatine and includes much territory lying outside the county palatine, such as a district surrounded by the city of Westminster in which the Court of the Duchy Chamber is situated[3].

1 As to the county palatine see PARA 300 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 See PARA 300 ante.

3 3 Bl Com (14th Edn) 78.

303. Seals.

Seals of the Duchy of Lancaster and the county palatine have been established by charter[1], the seal of the duchy remaining with the Chancellor of the Duchy of Lancaster at Westminster and that of the county palatine being kept in a chest in the county palatine in charge of the keeper of the palatine seal[2].

The provisions of the Law of Property (Miscellaneous Provisions) Act 1989[3] relating to the execution of deeds do not apply to the seal of the county palatine or the duchy seal[4].

1 See PARA 300 ante. As to the county palatine see PARA 300 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 4 Co Inst 210.

3 Ie the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (2), (3), (7), (8): see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 7-8, 32-33.

4 See ibid s 1(9)(a), (b).

304. Grants.

Modern grants under statutory authority are generally directed to be made under the seal or seals of the Duchy of Lancaster and of the county palatine[1]; but ordinary property or rights which are properly incidental to the duchy, whether in the county palatine or outside but within the duchy, will, it seems, pass under the duchy seal; whilst things which are incidental only to the jura regalia of the county palatine must pass under the palatine seal[2].

Grants under the duchy seal constitute matter of record, and as such are taken cognisance of by the courts[3] and require no delivery[4].

1 Under the Duchy of Lancaster Lands Act 1855, the duchy seal only is mentioned. Under the old common law, grants of duchy land were void unless passed under the duchy seal, and grants of palatine land were void unless passed under the palatine seal: see *A-G of the Duchy of Lancaster v Duke of Devonshire* (1884) 14 QBD 195 at 205, where a charter of 4 Hen 5 is cited; 4 Co Inst 210. As to the seals see PARA 303 ante. As to the county palatine see PARA 300 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 *Cotton v Johnson* (1690) 3 Salk 110 at 111. Thus a corporation cannot be created under the duchy seal, but may be under the palatine seal; and things naturally incidental to the tenure of land, such as advowsons, rents, ways or offices, may pass under the duchy seal, but not fairs or markets, which are incidents of palatine rights: *Cotton v Johnson* supra at 111.

3 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 218; 4 Co Inst 206, 209.

4 4 Co Inst 209. Formerly livery of seisin and attornment appear to have been necessary in the case of duchy land outside the county palatine, but not as to land in the county palatine, by reason of the jura regalia: 4 Co Inst 206.

305. Management.

The powers and authorities of the Chancellor and Council of the Duchy of Lancaster, with regard to duchy land and revenues have been specially preserved, and duchy land continues to be granted and demised and the rents and revenues to be received and applied under the order and direction of the Chancellor and Council and other officers of the duchy[1].

1 The ancient officers of the Duchy of Lancaster are the 'Chancellor, attorney, receiver-general, clerk of the Court, auditors, surveyors, messenger, and four learned of the law assistants and of council with the Court': 4 Co Inst 206. The officers usually appointed at the present day are the Chancellor, Vice-Chancellor, Attorney General, the receiver general, auditor, clerk of the council, a solicitor, a chief clerk, surveyors of lands, seal keeper, cursitor and clerks. As to the Chancellor see also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354. The Chancellor receives an annual salary: see the Ministerial and other Salaries Act 1975 s 1(1)(a), Sch 1 Pt I (Sch 1 Pt I substituted by the Ministerial and other Salaries Order 1996, SI 1996/1913, art 2, Sch 1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 423.

UPDATE

305 Management

NOTE 1--1975 Act Sch 1 Pt I amended: Ministerial and other Salaries Order 2001, SI 2001/3502.

306. Acquired land.

Land may be annexed to the Duchy of Lancaster by letters patent under the Great Seal[1], which are to be as good and available as if done with authority of Parliament[2]. The Chancellor and Council of the Duchy of Lancaster[3] have the same powers with regard to such land, whether lying within or without the county palatine, as they have with regard to duchy land lying within the county palatine[4]; and grants, leases and other dispositions of such land are subject to the same ceremonies in all respects as grants of the ancient possessions of the duchy[5]. The rents and revenues of the land so annexed to the duchy and county palatine are to be paid to the Court of the Duchy Chamber at Westminster, or to the receiver general or other ministers of the court, according to the ancient custom[6].

Notwithstanding these provisions, the power of annexation is of dwindling importance and no land has been annexed to the duchy for many years.

The power of annexation should be distinguished from the purchase of land under statutory powers[7].

1 As to the Great Seal see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 909 et seq.

2 See 2 & 3 Phil & Mar c 20 (Enlargement of Duchy of Lancaster) (1555) ss 4, 5. However, no land may be so annexed under this Act which forms part of the ancient inheritance of the Crown, the Principality of Wales, the Duchy of Cornwall or the Earldom of Chester, or which is within what were then the counties of Chester and Flint; nor may any land be so annexed exceeding and amounting in the whole above the yearly value of £2,000: see s 8.

3 As to the Chancellor and Council see PARA 305 ante.

4 See 2 & 3 Phil & Mar c 20 (Enlargement of Duchy of Lancaster) (1555) ss 6, 7. As to the county palatine see PARA 300 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

5 See ibid ss 3, 8. Certain land which had previously been severed from the Crown was again annexed to the duchy by this Act, and made subject to the same powers, provisions etc as the ancient possessions of the duchy: see ss 1-3.

6 See ibid s 9. In practice, the rents and revenues are usually paid to the receiver general.

7 As to the general power of purchasing land to be held with the possessions of the duchy see PARA 315 post.

307. Accounts.

Accounts of the receipts and disbursements of the Duchy of Lancaster must be submitted annually by the proper officers[1] of the duchy to the Treasury[2], in the form and with the explanations directed by the Treasury, and must be presented by the Treasury to both Houses of Parliament within one calendar month after the first meeting of Parliament subsequent to 1 January[3].

1 As to the officers of the Duchy of Lancaster see PARA 305 ante.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

3 Duchies of Lancaster and Cornwall (Accounts) Act 1838 s 2 (amended by the Duchy of Cornwall Management Act 1982 s 9(1)).

308. Sale of land generally.

The possessions of the Duchy of Lancaster were brought within the restrictions upon alienation imposed upon Crown land generally by the Crown Lands Act 1702[1], by which all grants, assurances and other dispositions of Crown land were rendered void unless made in accordance with the provisions of that Act[2]. The Chancellor and Council of the Duchy of Lancaster[3], however, are expressly empowered to contract and agree with any person or body politic, corporate or collegiate for the absolute sale of, and may absolutely sell and dispose of, any land belonging to the Crown in right of the duchy which they may deem not convenient to be held with the other possessions of the duchy, for such consideration as may appear sufficient[4]. No estates, interests or charges in or over duchy land may be conveyed or created except such as can subsist or be conveyed or created under the Law of Property Act 1925[5].

Upon payment of the purchase money the land is to be assured to the purchaser by the Chancellor and Council under the duchy seal, in the name of the monarch, her heirs or successors[6]. The assurance may be in the form provided by statute or any other more convenient form, and, if enrolled in the Court of the Duchy Chamber of Lancaster within six calendar months of its date, is valid and sufficient to pass all the rights and interests of the Crown to which it relates[7].

The purchase money for land so sold by the Chancellor and Council must be paid to the receiver general of the duchy, or his sufficient deputy or deputies, who must give receipts for it[8].

1 See the Crown Lands Act 1702 s 5; and PARA 205 ante; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 66.

2 See ibid s 5; and PARA 205 ante.

3 As to the Chancellor and Council see PARA 305 ante.

4 Duchy of Lancaster Lands Act 1855 s 1.

5 See the Law of Property Act 1925 s 208(2). Subject to certain exemptions, the Law of Property Act 1925 binds the Crown: see s 208(3).

6 Duchy of Lancaster Lands Act 1855 s 1.

7 Ibid s 1. For the form of conveyance see the Schedule, Form X. For the general provisions as to enrolment see PARA 316 post.

8 Ibid s 2.

309. Sale of intermixed land, rights etc.

The Chancellor and Council of the Duchy of Lancaster[1] may sell and grant and assure to any person or body politic or corporate, under the duchy seal[2], land which is intermixed with the property of individuals or lies remote from other Crown property; and ground or buildings appertaining to or anciently held with any castle or strong building used as a common gaol, or with any building used as a session house, court house or gaoler's house, or in which the magistrates may claim to have rights from length of use or enjoyment for the public purposes of the county or district; and also mills, fisheries, ferries, tolls, stalls of markets and fairs and wastes of the Crown within the duchy from which usurpation or encroachments have been made[3].

1 As to the Chancellor and Council see PARA 305 ante.

2 As to the duchy seal see PARA 303 ante.

3 48 Geo 3 c 73 (Land Revenue of the Crown and Duchy of Lancaster) (1808) s 10 (amended by the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt VII).

310. Exchange of land.

Where it appears to be for the advantage of the land revenues of the Duchy of Lancaster, the Chancellor and Council of the Duchy of Lancaster[1] may exchange any land of the duchy or county palatine[2] for any other land of equal or nearly equal value belonging to any other person, or body politic or corporate, if the latter consents[3]. Upon an exchange the surveyor general of the duchy may cause the land to be given and taken in exchange to be valued on oath[4] by a surveyor[5]. The oath and valuation must be filed in the office of the clerk of the Council of the Duchy, and the surveyor general of the duchy must report to the Chancellor and Council the grounds of his recommendation of the proposed exchange, together with the valuation[6]. If the Chancellor and Council approve the exchange, and the exchanging party assents, they must authorise the proper officers of the duchy to carry it into effect, subject to any terms and conditions they may think fit[7]. To complete the exchange, the Chancellor and Council may convey the land to the exchanging party under the seal or seals of the duchy or county palatine, and that party must at the same time convey to the Chancellor and Council in trust for the Crown in right of the duchy or county palatine the land agreed upon[8]. From the completion of the exchange the land conveyed by the Chancellor and Council vests in the person to whom it is conveyed as fully and effectually, and for the same estate or interest, as the land given in exchange did prior to the exchange; and the land conveyed to the Crown in exchange vests in the Crown in right of the duchy and county palatine as fully and effectually, and is subject to the same application, as the land granted in exchange prior to the exchange[9].

Upon such an exchange the Chancellor and Council may direct the payment or acceptance of any sum agreed upon for equalising the exchange, and money so paid by the Crown is to be paid out of the duchy revenues; any money paid to the Crown is to be invested in the manner generally applicable to proceeds of sale[10].

1 As to the Chancellor and Council see PARA 305 ante.

2 As to the county palatine see PARA 300 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

3 See 48 Geo 3 c 73 (Land Revenue of Crown and Duchy of Lancaster) (1808) s 28.

4 An affirmation or declaration may be made in lieu of an oath: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 926. The oath etc must be taken before any justice of the peace or magistrate: see ibid s 28.

5 See ibid s 28.

6 See ibid s 28.

7 See ibid s 28.

8 See ibid s 28, explained by the Duchy of Lancaster Act 1812 s 2. The conveyances by and to the Crown may be in the forms prescribed by 48 Geo 3 c 73 (Land Revenue of the Crown and Duchy of Lancaster) (1808) s 30, or as near to them as may be.

9 See ibid s 28.

10 See ibid s 29. As to the application of proceeds of sale see PARA 311 post.

311. Payment and application of purchase money.

The purchase money arising from the exercise of the various powers of sale of the Duchy of Lancaster must be paid into the hands of the receiver general of the duchy, whose receipt and acquittance is a full discharge, and purchasers are not liable to see to the application of the money[1].

The purchase money as paid in and received must be laid out by order of the Chancellor and Council[2] in the purchase of public funds or annuities transferable at the Bank of England in the name of the Duchy of Lancaster, and in that name the bank is authorised and required to permit transfers of the funds, stock or annuities, which must be accepted by the receiver general of the duchy[3].

Funds, stock or annuities so purchased must remain in the duchy's name and are not transferable without parliamentary authority, although the bank must pay the interest to the receiver general (whose receipt is a sufficient discharge) as parcel of the revenues of the duchy, and he is chargeable and accountable to the monarch for it, subject to charges, incumbrances, and outgoings (taxes only excepted)[4].

Notwithstanding anything in the Duchy of Lancaster Lands Act 1855, any funds for the time being belonging to the duchy, whether in a state of investment or not, may be invested in any of the authorised investments[5]; any investments so made must be made in the names of at least three persons to be nominated by the Chancellor and Council upon such trusts and in such manner as may be directed by the Chancellor and Council[6].

1 Duchy of Lancaster Act 1779 s 13 (amended by the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt VII); and see the authorities cited in note 4 infra. The provisions of the Duchy of Lancaster Act 1779 are mostly obsolescent.

2 As to the Chancellor and Council see PARA 305 ante.

3 See note 4 infra.

4 The various authorities for application in this manner are the Duchy of Lancaster Lands Act 1855 s 2 (as to sales under that Act); 48 Geo 3 c 73 (Land Revenue of Crown and Duchy of Lancaster) (1808) ss 10, 12 (both amended by the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt VII) (as to sales under that Act); and see the Duchy of Lancaster Act 1779 s 3 (as to sales of fee farm and other rents) (obsolescent).

5 The Duchy of Lancaster Act 1920 refers to the Trustee Act 1893, but this has been repealed: see now the Trustee Investments Act 1961 s 8. As to trustees' powers of investment generally see ss 1-6, Schs 1-3 (Sch 1 as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1017 et seq. The statutory powers of investment are exercisable according to the discretion of the trustees, but subject to any consent or directions required by the trust instrument: see the Trustee Act 1925 s 3. See further TRUSTS vol 48 (2007 Reissue) PARA 1031; SETTLEMENTS; WILLS.

6 See the Duchy of Lancaster Act 1920 s 1.

312. Improvement expenses.

The Chancellor and Council of the Duchy of Lancaster[1] may by order made in the court of revenue of the duchy direct any funds, stock or annuities standing in the Bank of England in the name or to the account of the duchy to be disposed of, and the money arising from it to be applied in or towards payment of any expenses incurred in the division, inclosure, drainage, embankment or other improvement of any land belonging to the Crown in right of the duchy, and which are certified by the surveyor general of the duchy upon oath, to be filed in the duchy office, to be proper, necessary, advantageous and beneficial[2].

Upon requisition made to it by order of the Chancellor and Council and also under the hand of the Attorney General of the duchy, the Bank of England must permit the person named and empowered by the order to make any sale or transfer of the funds, stock or annuities; and the sale or transfer being made by the person so authorised by signature of his own proper name for and on behalf of the Crown in right of the duchy is to be valid, legal, and effectual for such sale or transfer[3].

1 As to the Chancellor and Council see PARA 305 ante.

2 57 Geo 3 c 97 (Land Revenue of the Crown) (1817) s 25 (amended by the Agricultural Holdings Act 1817 s 95(4)). Compensation for certain improvements to agricultural holdings and for improvements and goodwill on termination of tenancies of business premises is payable as an improvement expense under this provision.

3 57 Geo 3 c 97 (Land Revenue of the Crown) (1817) s 25 (as amended: see note 2 supra). The Act is declared to be a full and complete indemnity and discharge to the bank, its officers and servants, for all things done or permitted in virtue of or in obedience to the order of the Chancellor and Council; and the same is not to be questioned or impeached in any court of law or equity, or be in any manner to their prejudice, loss or detriment: s 26.

313. Special powers of application.

In addition to the powers relating to the application of money[1], which are generally applicable to the purchase money received upon sales of duchy land, special powers are conferred upon the Chancellor and Council of the Duchy of Lancaster[2] as to money arising from sales authorised by the Duchy of Lancaster Lands Act 1855[3], of laying it out, either after or without any previous investment, and either alone or together with any money or funds belonging to the duchy, in the authorised improvements[4], or in the purchase of land under that Act[5].

1 See PARAS 311-312 ante.

2 As to the Chancellor and Council see PARA 305 ante.

3 See the Duchy of Lancaster Lands Act 1855 s 1; and PARA 308 ante.

4 Ie under 57 Geo 3 c 97 (Land Revenue of the Crown) (1817): see PARA 312 ante.

5 Duchy of Lancaster Lands Act 1855 s 2. As to the power to purchase land see PARA 315 post. With regard to money invested under the Duchy of Lancaster Lands Act 1855 (see also PARA 311 note 4 ante), the Chancellor and Council have the like powers as are conferred by 57 Geo 3 c 97 (Land Revenue of the Crown) (1817) (see PARA 312 ante): Duchy of Lancaster Lands Act 1855 s 2.

314. Leases of Duchy of Lancaster land.

The former provisions relating to leases of Duchy of Lancaster land have been repealed[1]. The Chancellor and Council of the Duchy of Lancaster[2] may now grant leases[3] on such terms as they think fit provided that the consideration is the best that can reasonably be obtained, or that the lease is for public or charitable purposes[4].

1 See the Duchy of Lancaster Act 1988 s 1(4), Schedule.

2 As to the Chancellor and Council see PARA 305 ante.

3 Ie notwithstanding the restrictions contained in the Crown Lands Act 1702 s 5 (see PARA 205 ante).

4 See the Duchy of Lancaster Act 1988 s 1.

315. Purchase of land by the Duchy of Lancaster.

The Chancellor and Council of the Duchy of Lancaster[1] may contract and agree with any person, or body politic, corporate or collegiate, for the purchase of, and may actually purchase, any land they may deem convenient to be held with the possessions of the duchy[2].

Land so purchased must be conveyed to the use of the monarch, her heirs or successors, in right of the Duchy of Lancaster, either in the form provided or in any more convenient form; and vests in the monarch, her heirs and successors in the same right and as fully and effectually, and is held with the like incidents, as other duchy land[3].

With these provisions are incorporated those of the Lands Clauses Consolidation Act 1845[4], but no land may be purchased by the Chancellor and Council otherwise than by agreement[5].

1 As to the Chancellor and Council see PARA 305 ante.

2 See the Duchy of Lancaster Lands Act 1855 s 3. There is a power to annex land to the duchy by letters patent: see PARA 306 ante.

3 See ibid s 3. The statutory form of conveyance set out in the Schedule, Form Y, not being obligatory, is not now used.

4 Presumably the later Lands Clauses Acts (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509) are also included, as they form part of a single code and are read together as such: see *R v London Corpn* (1867) LR 2 QB 292.

5 Duchy of Lancaster Lands Act 1855 s 4.

316. Enrolment of deeds.

Every instrument by which any land of the Duchy of Lancaster is purchased, sold, exchanged, leased, licensed to be demised, enfranchised or granted under any Act or otherwise must be enrolled in the duchy office within six calendar months after the date of the instrument; and the keeper of the records of the duchy must enrol it and certify the enrolment upon the instrument[1].

Where the enrolment of any instrument is or has been omitted or delayed beyond the period limited, the Chancellor and Council[2], on reasonable cause shown, may permit the enrolment or entry to be made out of time, and, when so made, it is to be as valid and effectual as if made in due time[3].

1 Duchy of Cornwall Act 1844 ss 30, 31 (as applied to the Duchy of Lancaster by the Assessionable Manors Award Act 1848 s 14). As to enrolment provisions in the Duchy of Cornwall see PARAS 345-346 post.

2 As to the Chancellor and Council see PARA 305 ante.

3 Duchy of Cornwall Act 1844 s 35 (as applied by the Assessionable Manors Award Act 1848 s 14).

317. Validity of copies.

Similar provision is made with regard to the validity of examined copies and certificates of the enrolment and contents of deeds and documents as in the case of the Duchy of Cornwall[1].

1 See the Assessionable Manors Award Act 1848 ss 6, 14; and PARA 347 post.

6. DUCHY OF CORNWALL

318. Creation and descent of title.

The title of Duke of Cornwall and the inheritance of the duchy were created by Edward III in 1337 and vested in the Black Prince[1] by charter having the authority of Parliament[2] to hold to the said duke, and to his first-born son and his heirs, kings of England and dukes of the said place in the kingdom of England, to succeed by heredity[3].

Being equivalent to an Act of Parliament, this charter has been held to be good, even though it creates a mode of descent unknown to the common law[4], which it is doubtful whether the monarch's grant can do without parliamentary authority[5].

1 Ie Edward, eldest son of Edward III.

2 See 1 Bl Com (14th Edn) 225, note.

3 See *The Prince's Case* (1606) 8 Co Rep 1a at 16b. See also the Duchy of Cornwall (No 2) Act 1844, preamble (repealed). For excerpts from the charter itself see *Vice v Thomas* (1842) Smirkes Rep, Appendix, 20, 21; *Rowe v Brenton* (1828) 8 B & C 737.

4 *The Prince's Case* (1606) 8 Co Rep 13b at 16a, 20a. The words 'by authority of Parliament' in a royal charter are sufficient to make it an Act of Parliament: *The Prince's Case* supra. Acts concerning the Prince of Wales are public Acts to be judicially noticed: *The Prince's Case* supra at 28b. Nothing in the Administration of Estates Act 1925 affects or alters the descent or devolution of any property for the time being belonging to the Duchy of Cornwall: see s 57(2).

5 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 870.

319. Statutory powers.

Under the original charter of the Duchy of Cornwall the land and possessions of the duchy are inalienable from it, and sales and other dispositions by the Duke of Cornwall[1] or the monarch must therefore be made under the express powers conferred by statute; otherwise they will be invalid as against future dukes of Cornwall[2].

1 'Duke of Cornwall' includes all succeeding dukes, and the monarch for the time being whilst the possessions of the duchy are vested in the Crown: Duchy of Cornwall Management Act 1863 s 37. Section 37 has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the 1863 Act: Duchy of Cornwall Management Act 1982 s 10(3). As to the vesting of the duchy when there is no heir apparent see PARA 326 post.

2 See the Duchy of Cornwall Management Act 1863, preamble. After *The Prince's Case* (1606) 8 Co Rep 1a at 29b, 30a, it was realised that no lease by one duke could bind a successor. Accordingly it became the practice to confer on each duke power to grant leases for limited terms. This practice continued until the Duchy of Cornwall Act 1844 was passed. This was followed by the Duchy of Cornwall Management Act 1863, which, as amended, is still the governing statute. The Duchy of Cornwall Management Acts 1863 to 1982 comprise the Duchy of Cornwall Management Act 1863, the Duchy of Cornwall Management Act 1868, the Duchy of Cornwall Management Act 1893 and the Duchy of Cornwall Management Act 1982. These Acts are to be construed together as one Act, and cited collectively: Duchy of Cornwall Management Act 1982 s 11(2). Dealings with the duchy possessions are now principally regulated by these Acts. Nothing in the Duchy of Cornwall Management Acts 1863 to 1982, however, is to take away, alter or prejudice (except so far as expressly rescinded or altered by those Acts) any provisions contained in the Inclosure Acts (see COMMONS vol 13 (2009) PARA 418 et seq) or any other Acts relating to the possessions, revenues or management of the duchy: Duchy of Cornwall Management Act 1863 s 40.

320. The Duke of Cornwall.

The monarch's eldest son, being also heir apparent, succeeds to the title of Duke of Cornwall immediately he is born by right of inheritance without fresh creation[1]. On the death of the heir apparent without leaving issue the next surviving son of the monarch succeeds[2]; but if the heir apparent leaves issue (who would in that case become heir apparent), the Duchy of Cornwall does not vest in that issue or in the next surviving son of the monarch, but reverts to the Crown[3] under the general rule by which, in the absence of an eldest son and heir apparent, the duchy vests in the monarch[4].

The Duke of Cornwall has legal title vested in him on succession even if he is under 18[5] and consequently conveyances and leases are granted in his name not by trustees. The duke has the estates vested in him as an individual and not as trustee. The Duchy of Cornwall is not as such a legal person. Lands and other property are described as 'possessions of the Duchy of Cornwall', which may be understood as an institution without separate legal personality. As the duke is an individual and not a corporation his actions are personal and can only bind a successor by virtue of statute[6].

1 *The Prince's Case* (1606) 8 Co Rep 1a at 16b; 1 Bl Com (14th Edn) 225; *Rowe v Brenton* (1828) 8 B & C 737. A daughter, even though heiress presumptive, does not become Duke of Cornwall: Com Dig, Roy, Ga.

2 *Lomax v Holmden* (1749) 1 Ves Sen 290 at 294-295, 'primogenitus' being taken in the sense of 'eldest' son. Lord Hardwicke LC cites Henry VIII, Edward VI and Charles I as instances of second sons taking by inheritance in their father's lifetime: *Lomax v Holmden* supra at 294. Coke says that the duchy descends to the 'first-begotten' sons only during their father's life, and that second-born sons only take by fresh creation: see *The Prince's Case* (1606) 8 Co Rep 1a at 29b, 30a. This view has been generally considered erroneous (*Lomax v Holmden* supra at 294-295 per Lord Hardwicke LC; 1 Bl Com (14th Edn) 224, note 10), and the duchy became vested in George V by inheritance, although he was the monarch's second son. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 30.

3 1 Bl Com (14th Edn) 224, note.

4 Com Dig, Roy, Ga. The issue of the monarch's eldest son and heir apparent do not succeed during the monarch's life: Com Dig, Roy, Ga; *The Prince's Case* (1606) 8 Co Rep 1a at 29b, 30a.

5 See PARA 325 post.

6 *The Prince's Case* (1606) 8 Co Rep 1a.

321. The Council of the Duchy of Cornwall.

The Council of the Duchy of Cornwall appears to have existed since the creation of the duchy and has been entrusted with powers to oversee the management and finances of the duchy. Its constitution is conventional although it has certain statutory powers[1]. Members hold office at the pleasure of the Duke of Cornwall but are in practice appointed for specified terms of years which may be renewed. The duke, if present, is chairman or, in his absence, the Lord Warden[2]. The other officers of the duchy[3] are also members of the Council, as well as a number of persons who have the confidence of the duke. These persons usually include people experienced in agricultural and property matters.

The Council has custody of both the seal of the Duchy of Cornwall[4] and of the duke's privy seal[5]. All transactions are reported to the Council; and its members (by convention rather than by law) authorise the use of the seal.

1 See the Duchy of Cornwall Act 1844 s 36 (power to fix fees for inspection of enrolments); the Duchy of Cornwall Management Act 1863 s 12 (authorisation of payments from capital account); and s 16 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)) (power of attorney to authorise transfers of stock).

2 As to the Lord Warden see PARA 322 post.

3 As to the officers of the duchy see PARA 322 post.

4 As to the seal of the duchy see PARA 327 post.

5 As to the duke's privy seal see PARA 328 post.

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322. Officers of the Duchy of Cornwall.

The officers usually appointed for the Duchy of Cornwall[1] include:

5 (1) the Lord Warden of the Stannaries in Cornwall and Devon, who acts as deputy chairman of the Council of the Duchy of Cornwall[2], and chairman when there is no duke of full age;

6 (2) the Attorney General to the Prince of Wales (or, if there is no prince, to the Duchy of Cornwall), who is the principal legal officer and in whose name legal proceedings are taken and defended;

7 (3) the receiver general who has oversight of the financial affairs of the duchy; and

8 (4) the keeper of the records who is normally also the secretary.

Some of these officers have statutory powers and duties conferred on them[3] and they are referred to as the 'proper officers'[4].

Where before 6 August 1844[5] duties have been imposed by statute upon any officer, and by reason of changes which have since taken place it becomes expedient that those duties should be given to some other officer, the duke may appoint any officer of the duchy to perform and fulfil those duties[6].

1 Ie by the Duke of Cornwall or by the monarch whilst in possession of the duchy, subject, as to offices held during pleasure, to removal by the duke on his attaining his majority: see the Duchy of Cornwall Management Act 1863 s 38 (amended by the Family Law Reform Act 1969 s 10(3)); and PARA 325 post. The officers retain their offices for six months after a demise of the Crown or descent of the duchy but it is presumed that they may be removed during that period: see the Demise of the Crown Act 1727 s 7 (amended by the Statute Law Revision Act 1948).

2 As to the Council of the Duchy of Cornwall see PARA 321 ante.

3 Thus the receiver general is responsible for ensuring the repayment of advances for improvements: see the Duchy of Cornwall Management Act 1863 s 8 (as amended); and PARA 339 post. The keeper of the records is responsible for payments of proceeds of sale into the capital account (see the Duchy of Cornwall Management Act 1863 s 4), for enrolments (see ss 31-33 (s 32 amended by the Supreme Court of Judicature (Consolidation) Act 1925 s 24(1)); and the Duchy of Cornwall Management Act 1982 s 10(3)), and as defendant to specific performance suits (see the Duchy of Cornwall Management Act 1863 s 34 (amended by the Duchy of Cornwall Management Act 1982 s 10(2))). The Lord Warden represents the duke for the purposes of the Inclosure Act 1845 (see s 18 (amended by the Statute Law Revision Act 1891)) and the secretary for the purposes of the Landlord and Tenant Act 1954 Pt I (ss 1-22) (as amended), the Rent (Agriculture) Act 1976 and the Rent Act 1977 (see the Housing Act 1980 s 73, Sch 8 para 10).

4 Duchy of Lancaster and Cornwall (Accounts) Act 1838 s 2 (amended by the the Duchy of Cornwall Management Act 1982 s 9(1)).

5 See the Duchy of Cornwall Act 1844 s 39. The words 'Where at any time heretofore' which open this provision would seem to limit the application of this provision to duties imposed before the passing of the Act.

6 See ibid s 39. Such appointments by the duke may be made either for one case, or for any class of cases, or for all cases generally, and as to all the duties or powers of any officer or some only: see s 39.

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323. Officials and advisers.

In addition to the officers of the Duchy of Cornwall[1], there are also other officials and advisers. Some of these positions are statutory, but most are conventional and subject to change for administrative convenience[2]. The officials and advisers include:

(1) the auditor[3], who has statutory functions[4];
(2) the solicitor who is appointed by sign manual[5] warrant and represents the Duke of Cornwall in the administration of bona vacantia[6];
(3) the deputy (or sometimes assistant) secretary and keeper of the records who has practical responsibility for delegated administration[7];
(4) the records clerk;
(5) the property services manager, formerly the clerk surveyor;
(6) the deputy receiver, who handles daily financial matters on behalf of the receiver general;
(7) land stewards, who manage the districts in which the duchy lands are administered.

1 As to the officers of the duchy see PARA 322 ante.

2 See the Duchy of Cornwall Act 1844 s 39; and PARA 322 ante.

3 More than one auditor of the duchy may be appointed; and, if more than one is appointed, a reference to the auditor of the duchy in any enactment passed before the Duchy of Cornwall Management Act 1982 is to be construed as a reference to any of the auditors: Duchy of Cornwall Management Act 1982 s 9(3), (4). A person is not qualified for appointment as auditor of the duchy unless he is qualified under the companies legislation (see COMPANIES vol 15 (2009) PARA 969) for appointment as auditor of a company: see the Duchy of Cornwall Management Act 1982 s 9(2) (substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 46). As to duties of auditors and of the proper officers of the duchy in relation to accounts see PARA 330 post.

4 Ie under the Duchy of Cornwall Management Acts 1863 to 1982.

5 As to the use of the sign manual see also PARA 328 post.

6 As to bona vacantia see PARA 231 et seq ante. The solicitor may also disclaim property of a dissolved company under the Companies Act 1985 s 656: see PARA 238 post; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 935. Any person may act as solicitor to the duchy despite any statute, order, rule, usage, or custom to the contrary (see the Stannaries Act 1855 s 31 (amended by the Statute Law Revision Act 1892)), but in practice a qualified solicitor is appointed as the solicitor. As to solicitors, and their qualification, see LEGAL PROFESSIONS.

7 See, eg, the Duchy of Cornwall Management Act 1863 ss 4, 32 (as amended); and PARAS 342, 346 post.

UPDATE

323 Officials and advisers

NOTE 3--1982 Act s 9(2) amended: SI 2008/948.

324. Treasury control.

The Treasury[1] deals with relations between the Duchy of Cornwall and the government, and certain specific powers and responsibilities in relation to the duchy have been conferred on that department. The sanction and approval of two or more Treasury commissioners[2], by warrant under their hands, is required before the powers conferred by the Duchy of Cornwall Management Act 1863 can legally be exercised in respect of (1) sales, disposals, charges or arrangements by way of compromise of, upon or concerning Duchy of Cornwall possessions; (2) repurchases, or redemptions of an annual sum reserved or made payable on any such sale, disposal or enfranchisement; (3) purchases except where the consideration does not exceed a specified sum[3]; and (4) the application of capital money for improvements[4].

This sanction and approval may be given either for any particular class of cases or for any particular case, and either with or without conditions or restrictions, as the commissioners or any two of them think fit[5].

Any transaction affecting duchy property which would not otherwise be authorised may be entered into if the Treasury has authorised it on application by or on behalf of the Duke of Cornwall[6]. The Treasury may so authorise a transaction if satisfied that the transaction will be conducive to the good management of the duchy[7]. Where a transaction affects land belonging to the duchy, the Treasury must also consider the effect it would have on persons living on, or in the vicinity of, the land[8]. An authorisation may be given for a particular transaction or for transactions of a particular description, and with or without any condition or restriction, as the Treasury may think fit[9].

The accounts of the duchy must be submitted to the Treasury in the required form[10].

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the Treasury commissioners see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 513.

3 From time to time agreement is reached for this sum to be increased to reflect market values. At present the limit is £200,000.

4 Duchy of Cornwall Management Act 1863 s 11 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)). This provision extends to sales made under the Duchy of Cornwall Management Act 1982: see the Duchy of Cornwall Management Act 1863 s 11 (as so amended).

5 See the Duchy of Cornwall Management Act 1863 s 11 (as amended: see note 4 supra).

6 Duchy of Cornwall Management Act 1982 s 7(1).

7 Ibid s 7(2).

8 Ibid s 7(3). The Treasury must have regard to the interests of both present and future dukes of Cornwall or possessors of the duchy when considering (1) whether to give (a) a sanction or approval under the Duchy of Cornwall Management Act 1863 s 11 (as amended) or the Duchy of Cornwall Management Act 1868 s 2 (as amended) (see PARA 339 post); (b) an authorisation under the Duchy of Cornwall Management Act 1982 s 3 (see PARA 333 post); (c) a notification under s 4 (see PARA 339 post); or (d) an authorisation under s 7; and (2) to what if any conditions or restrictions a sanction or approval under head (1)(a) supra or an authorisation under heads (1)(b) and (1)(d) supra should be subject: s 8.

9 Ibid s 7(4).

10 See the Duchy of Lancaster and Cornwall Accounts Act 1838 s 2 (as amended); and PARA 330 post.

325. Management during minority of the Duke of Cornwall.

During such time as any Duke of Cornwall is under the age of 18 the powers, privileges and authorities vested in him by statute[1] or otherwise are exercisable in his name and on his behalf by the monarch as the duke's guardian, or by such persons, acting under the monarch's authority, as may be appointed by warrant[2]; and all acts and things so done are to be as valid and effectual in law as if done by the Duke of Cornwall himself[3]. However, all offices, appointments and employments relating to the duchy granted during the duke's minority, and held during pleasure, may be determined by him after he has attained the age of 18[4].

1 Ie the Duchy of Cornwall Management Acts 1863 to 1982: see PARA 319 ante.

2 The warrant must be under the royal sign manual, countersigned by any three or more Treasury commissioners. As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13. As to the Treasury commissioners see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 513.

3 See the Duchy of Cornwall Management Act 1863 s 38 (amended by the Family Law Reform Act 1969 s 10(3)). A Prince's Council was appointed under the powers contained in this provision during the minority of Prince Charles, the present Duke of Cornwall.

4 See the Duchy of Cornwall Management Act 1863 s 38 (as amended: see note 3 supra).

326. Management during vacancy.

Whenever for the time being there is no Duke of Cornwall, the monarch may by warrant[1] authorise so many of the regular officers of the Duchy of Cornwall, or any other persons being not less than three or more than five in number as seems fit, to exercise in her name and on her behalf the powers, privileges and authorities in relation to the duchy vested in her[2], and may commit the custody of the duchy seal to any one or more of those regular officers[3].

1 The warrant must be under the royal sign manual, countersigned by any three or more Treasury commissioners. As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13. As to the Treasury commissioners see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 513.

2 Ie under the Duchy of Cornwall Management Acts 1863 to 1893 or otherwise.

3 Duchy of Cornwall Management Act 1863 s 39. As to the duchy seal see PARA 327 post.

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327. Seal of the Duchy of Cornwall.

In general, instruments relating to the Duchy of Cornwall are required to be passed under the duchy seal[1], which is directed to be held by the personage for the time being entitled to the duchy possessions, or by some person lawfully appointed to be the keeper of the same[2]. The provisions of the Law of Property (Miscellaneous Provisions) Act 1989[3] relating to the execution of deeds do not apply to the duchy seal[4].

1 For the cases in which documents are required to be passed under the duchy seal see eg paras 337, 343 post.

2 Duchy of Cornwall Management Act 1863 s 2.

3 Ie the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (2), (3), (7), (8): see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 7-8, 32-33.

4 See ibid s 1(9)(c).

328. Privy seal.

The Duke of Cornwall[1] exercises certain functions by privy seal. The privy seal is affixed by a warrant of the Council of the Duchy of Cornwall[2], acting under a sign manual warrant from the hand of the duke himself. This is used for such matters as the appointment of sheriffs for Cornwall, the exercise of patronage to benefices and the appointment of officers and members of the Council.

1 As to the Duke of Cornwall see PARA 320 ante.

2 As to the Council of the Duchy of Cornwall see PARA 321 ante.

329. Contracts.

Contracts or agreements touching any matter or thing to be done under the Duchy of Cornwall Management Acts[1] may be made by persons nominated by the Duke of Cornwall by sign manual warrant or otherwise; and claims by persons as against the duke under any contract or agreement relating to the possessions of the duchy can only be enforced in equity[2] by suit as against the keeper of the records of the duchy, and the duke is not personally liable to any action or other proceeding in consequence of such a contract or agreement, or concerning any other matter or thing done or purporting to be done under the authority of the Acts, or for any omission or otherwise[3]. The keeper must be indemnified out of the duchy revenues against the costs, expenses and losses attending any suit so brought against him[4].

1 Ie the Duchy of Cornwall Management Acts 1863 to 1893, and the Duchy of Cornwall Management Act 1982: see the Duchy of Cornwall Management Act 1863 s 34 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)).

2 Where the court has jurisdiction to entertain an application for an injunction or specific performance it may award damages as well or in addition: see the Supreme Court Act 1981 s 50; and SPECIFIC PERFORMANCE vol 44(1) (Reissue) PARA 959. See also DAMAGES.

3 See the Duchy of Cornwall Management Act 1863 s 34 (as amended: see note 1 supra). As to the representation of the duke in legal proceedings relating to the duchy see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 120.

4 See ibid s 34 (as amended: see note 1 supra).

UPDATE

329 Contracts

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

330. Accounts.

Accounts of the receipts and disbursements of the Duchy of Cornwall must be submitted annually to the Treasury[1] by the proper officers of the duchy[2] in the form and with the explanations required by the Treasury[3]. This annual account must be presented by the Treasury to both Houses of Parliament not later than 30 June following the end of the year for which they are made up[4]. The accounts of the duchy are to be audited by its auditor or one or more of its auditors[5]. It is the duty of the person or persons auditing the accounts to report on the accounts to the Duke of Cornwall or the possessor for the time being of the duchy and to state whether the accounts give a true and fair view of the matters to which they relate[6]. In preparing such a report, the auditor or auditors must carry out such investigations as appear to be necessary for forming an opinion as to whether the proper officers of the duchy have kept proper accounting records and have maintained a satisfactory system of control over transactions affecting duchy property and whether the accounts to which the report refers are in agreement with the accounting records of the duchy, and the report must state the opinion so formed on those matters[7].

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the proper officers see PARA 322 ante.

3 Duchies of Lancaster and Cornwall (Accounts) Act 1838 s 2 (amended by the Duchy of Cornwall Management Act 1982 s 9(1)).

4 See the Duchies of Lancaster and Cornwall (Accounts) Act 1838 s 2 (as amended: see note 3 supra).

5 Ibid s 9(5).

6 Ibid s 9(6).

7 Ibid s 9(7). The report must also state whether any condition or restriction has been satisfied or complied with, to which a sanction or approval under the Duchy of Cornwall Management Act 1863 s 11 (as amended) (see PARA 324 ante) or under the Duchy of Cornwall Management Act 1868 s 2 (as amended) (see PARA 339 post) is subject or to which an authorisation under the Duchy of Cornwall Management Act 1982 s 3 (see PARA 333 post) or s 7 (see PARA 324 ante) is subject: s 9(8). It is the duty of the proper officer of the duchy to attach to the accounts particulars of any authorisation given under s 7 (see PARA 324 ante) during the year to which the accounts relate: s 9(9).

331. Possessions of the Duchy of Cornwall.

'Possessions', when applied to the Duchy of Cornwall, includes regalities, hundreds, castles, honours, lordships, manors, advowsons, forests, chases, woods, parks, messuages, lands, buildings, rights of common, mines, minerals, rights of entry or other rights in respect of mines or minerals, rentcharges in lieu of tithes, fixtures, service, rents, pensions, annuities, annual sums reserved on any sale, disposal or enfranchisement made under the powers of the Duchy of Cornwall Management Act 1863, rights, privileges, easements, possessions, tenements and hereditaments whatsoever, whether in possession or reversion, parcel or reputed or claimed to be parcel of the Duchy of Cornwall, or annexed to the same[1].

1 See the Duchy of Cornwall Management Act 1863 s 37; and the Duchy of Cornwall Management Act 1982 s 10(3). As to the extinguishment of rentcharges see RENTCHARGES AND ANNUITIES.

332. Power to alienate Duchy of Cornwall land.

Subject to Treasury consent[1], the Duke of Cornwall may dispose by way of absolute sale, or disposition for a limited period[2], to any person of any part of the possessions[3] of the Duchy of Cornwall subject to any reservations, exceptions and restrictions[4]. No estates, interests or charges in or over duchy land may be conveyed or created except such as are capable of subsisting or of being conveyed and created under the Law of Property Act 1925[5].

1 See PARA 324 ante. Purchasers are not bound to see that this sanction has been obtained: see PARA 344 post. See also PARA 342 note 9 post. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the leasing of duchy land see PARA 334 post.

3 See PARA 331 ante.

4 See the Duchy of Cornwall Management Act 1863 s 3 (amended by the Duchy of Cornwall Management Act 1893 s 1); and the Duchy of Cornwall Management Act 1863 s 11 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)).

5 See the Law of Property Act 1925 s 208(2). Subject to certain exemptions, the Law of Property Act 1925 binds the Crown: see s 208(3).

333. Power to charge Duchy of Cornwall property.

Subject to previous authorisation by the Treasury[1], made on application, Duchy of Cornwall property may be charged, in respect of any loan made to the Duke of Cornwall for the purpose of exercising his power to purchase land[2] or of financing the permanent improvement of the possessions of the Duchy of Cornwall[3], with payment of the following sums: (1) the principal of the loan; (2) interest upon it; (3) any other money due under it; and (4) the costs of and incidental to it[4].

Treasury authorisation may be given for a particular charge or for charges of a particular description, with or without any condition or restriction, as the Treasury may think fit[5]. In particular, an authorisation may be given for charges in respect of loans for a particular purpose or not exceeding a specified amount[6].

1 As to Treasury control see PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 Ie under the Duchy of Cornwall Management Act 1863 s 7 (as amended): see PARA 336 post.

3 As to improvements see PARA 339 post.

4 Duchy of Cornwall Management Act 1982 s 3(1), (2).

5 Ibid s 3(3). As to the Treasury's duties in considering whether to make an authorisation see PARA 324 ante.

6 Ibid s 3(4).

334. Power to lease Duchy of Cornwall land.

The Duke of Cornwall has full powers of leasing, provided that the transaction is for full value; but any other transaction, including a lease for a premium which exceeds the limit set by the Treasury from time to time, requires Treasury consent[1].

1 This simple statement represents the combined effect of a number of provisions and amendments. The Duchy of Cornwall Management Act 1863 s 3 (as originally enacted) authorised leases for a premium or a rent or a combination, but limited the exercise of the power to a period within 31 years from the passing of the Act. This limit was removed by the Duchy of Cornwall Management Act 1893 s 1. The Duchy of Cornwall Management Act 1863 s 21 (as originally enacted) authorised other leases at a full and fair rent 'not exceeding thirty-one years in possession, but not in reversion', but those words were repealed by the Duchy of Cornwall Management Act 1982 s 5. The Duchy of Cornwall Management Act 1863 s 22 (as originally enacted) authorised building leases up to 99 years, but this limit was removed by the Duchy of Cornwall Management Act 1893 s 1. The restriction on reversionary leases was removed by the Duchy of Cornwall Management Act 1982 s 5. The Duchy of Cornwall Management Act 1863 s 23 gave the Treasury power to authorise leases for a premium. This power now overlaps with that of s 3 (as amended) (see PARA 332 ante) and Treasury consent is given on the same basis as for sales. As to Treasury consent see PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

As to the power of the duke to purchase leasehold interests see PARA 336 post.

335. Surrenders and extinctions of leases.

Any leasehold or other outstanding interest in any of the possessions of the Duchy of Cornwall[1] may be extinguished or surrendered in consideration of an annuity or yearly sum payable during the period for which the estate or interest would otherwise have continued, or any other period deemed expedient, and chargeable upon the possessions in which the estate or interest existed[2]. A new lease may be granted in consideration of a surrendered term[3].

The power to purchase land[4] includes the purchase of leasehold land the reversion of which is part of the possessions of the duchy[5].

1 See PARA 331 ante.

2 Duchy of Cornwall Management Act 1863 s 9.

3 See ibid s 26.

4 Ie under ibid s 7 (as amended): see PARA 336 post.

5 Duchy of Cornwall Management Act 1982 s 2(1).

336. Power to purchase land.

With the previous consent of two or more Treasury commissioners signified by warrant under their hands[1], or without such previous sanction where the consideration does not exceed a specified sum[2], the Duke of Cornwall may purchase any manors, lordships, advowsons, messuages, land, mines, minerals[3], tenements or hereditaments in England in fee simple, a term of years in any land in England or Wales (including a term in reversion), or any tenements of inheritance, or any rents, pensions, annuities, rights of common or mining or other charges or rights[4]. The power to purchase land is extended to leasehold interests either in the possessions of the Duchy of Cornwall[5] or in other property[6].

The property so purchased must be conveyed, released, or surrendered to the duke in the form provided[7] or in any more convenient form, and where not extinguished by the conveyance, release or surrender, it becomes part and parcel of the possessions of the duchy, and subject to the same limitations, provisions, powers and authorities in every respect[8].

1 The vendor is not bound to see that this consent has been obtained: see PARA 344 post. As to Treasury consent see PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 See PARA 324 note 3 ante.

3 'Minerals' includes all minerals (whether metallic or not), stone, and substrata of every description: Duchy of Cornwall Management Act 1863 s 37. Section 37 has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the Duchy of Cornwall Management Act 1863: Duchy of Cornwall Management Act 1982 s 10(3).

4 Duchy of Cornwall Management Act 1863 s 7 (amended by the Duchy of Cornwall Management Act 1982 s 2(1)); and the Duchy of Cornwall Management Act 1863 s 11 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)). For the purposes of the Duchy of Cornwall Management Act 1863 Act s 7 (as amended), any interest in the proceeds of sale of land is to be treated as if it were land: Duchy of Cornwall Management Act 1982 s 2(2). Accordingly, a purchase of land may now be made under the powers of the 1863 Act or of the 1982 Act: see the Duchy of Cornwall Management Act 1863 Act s 11 (as so amended).

5 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

6 See the Duchy of Cornwall Management Act 1863 s 7 (as amended: see note 4 supra). See also PARA 335 ante.

7 Ie by ibid s 5, Schedule. See PARA 343 post.

8 Ibid s 7 (as amended: see note 4 supra).

337. Grants for churches, schools, etc.

Subject to certain restrictions as to extent and value, the Duke of Cornwall, by deed under the Duchy of Cornwall seal[1], may make grants out of the land and possessions of the duchy[2] for the purposes of (1) any building suitable for use as or conversion into a church, chapel or school for the education of poor persons; (2) any ground suitable for the site of any church or chapel, with or without a cemetery or burial ground; (3) any ground suitable for a cemetery or burial ground to a church or chapel; (4) any house suitable for the residence of the minister for any church or chapel, or the teacher at any such school; (5) any ground suitable for the site of any such residence or school; (6) any building or site for a building solely for the celebration of divine service by any specified denomination of nonconforming Christians[3].

For any one of these purposes not more than one acre of premises of greater value than £200 may be granted in any particular parish or place; but this restriction does not apply where the excess in value over £200 is paid into the Bank of England[4], as in the case of a sale for a gross sum[5], or where the excess is compensated for by an annual sum reserved on the grant and made payable to the duke as part of the revenues of the duchy[6].

Other gifts may be made with Treasury consent[7].

1 As to the duchy seal see PARA 327 ante.

2 See PARA 331 ante.

3 Duchy of Cornwall Management Act 1863 s 36.

4 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

5 See PARA 342 post.

6 Duchy of Cornwall Management Act 1863 s 36. In estimating the value no account is to be taken of the value of any building, the cost of which has been defrayed by public subscription, or which has been previously erected solely with the view of being used for the purpose to which it is proposed to be devoted by the grant: see s 36.

7 See the Duchy of Cornwall Management Act 1982 s 7. As to Treasury consent see PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

338. Effect of grant.

Grants for churches, schools and so on[1] may be made to any person or body politic or corporate, and when enrolled[2] in the office of the Duchy of Cornwall are valid against the Duke of Cornwall and vest the property in the grantees who, together with their representatives, are to be deemed to be in the actual seisin and possession of the premises by force of the Duchy of Cornwall Management Act 1863 with full capacity to hold and enjoy the property in all respects according to the tenor of the deed; but in the case of a free grant, where the property ceases to be used for the purpose for which it was granted, or is used for any other purpose, the property, if unconsecrated, is to revert to and again become parcel of the duchy as if no grant had been made[3].

1 See PARA 337 ante.

2 See PARA 345 post.

3 Duchy of Cornwall Management Act 1863 s 36. Concurrent powers of making these grants are conferred by the Duchy of Cornwall Act 1844 s 26, but no grant is to be made under that Act contrary to these provisions: Duchy of Cornwall Management Act 1863 s 36. Buildings and land of the duchy may also be granted to the Church Commissioners by way of gift or for valuable consideration, whether or not full consideration, for purposes connected with churches, church halls, churchyards, burial grounds, and houses of residence, or for providing access to or improving the amenities of such buildings or places: see the New Parishes Measure 1943 ss 13(1), 14(1)(c)(iii) (s 13(1) amended by the Charities Act 1960 s 48(2), Sch 7 Pt II; the Church Property (Miscellaneous Provisions) Measure 1960 s 5; and the Church of England (Miscellaneous Provisions) Measure 1983 s 1(1)). See further ECCLESIASTICAL LAW.

339. Improvements.

With the previous sanction of the Treasury[1], any part of the gross sums received in respect of sales or disposals of Duchy of Cornwall possessions[2] may be advanced and applied (1) in permanently improving the Duchy of Cornwall possessions by inclosure, erecting buildings or executing drainage or other works upon it[3]; or (2) in the improvement of the house property of the duchy and purposes connected with it including the laying out and forming of new roads, streets, sewers or drains, and, where required for effecting any of this class of improvements, the purchase of any lease or leases in existence of any parts of the property intended to be improved[4].

Sums so advanced for improvements are to be a charge upon and repaid from the duchy revenues by annual instalments to the account of the duchy at the Bank of England[5] or to any authorised bank account[6]. The receiver general of the duchy must see that the annual instalments are paid, and they are applicable as money arising from sales of duchy possessions under the Duchy of Cornwall Management Act 1863[7]. A sum need not be repaid under these provisions if the Treasury, on application, notifies the Duke of Cornwall that, in its opinion, that sum is in all the circumstances to be regarded as a proper charge on capital[8].

1 As to Treasury consent see PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

2 As to the application of such sums of money generally see PARA 348 post. As to the possessions of the Duchy of Cornwall see PARA 331 ante.

3 See the Duchy of Cornwall Management Act 1863 s 8 (amended by the Duchy of Cornwall Management Act 1868 s 1; the Mines and Quarries (Tips) Act 1969 s 32(2)(d); the Duchy of Cornwall Management Act 1982 ss 4(1), 10(2); and the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt II).

4 See the Duchy of Cornwall Management Act 1868 s 2.

5 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

6 As to authorised bank accounts see the Duchy of Cornwall Management Act 1982 s 6 (as amended); and PARA 349 post. In the case of improvements falling within head (1) in the text, the instalments are to be of not less than one-thirtieth part in every year: see the Duchy of Cornwall Management Act 1863 s 8 (as amended: see note 3 supra). In the case of improvements falling within head (2) in the text, the instalments are to be of such amount, not being less than one-sixtieth part in every year, as the Treasury directs: see the Duchy of Cornwall Management Act 1868 s 2. Sums advanced for improvements to farm houses or farm buildings are repayable in annual instalments of not less than one-thirtieth part in every year: see s 2 proviso.

7 See the Duchy of Cornwall Management Act 1863 s 8 (as amended: see note 3 supra); and head (1) in the text. As to the receiver general see PARA 322 ante.

8 Duchy of Cornwall Management Act 1982 s 4(1). Such notification may be given in respect of the whole or any part of a particular advance or of the whole or any part of advances of a particular description: s 4(2).

UPDATE

339 Improvements

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

340. Other transactions.

Any transaction affecting Duchy of Cornwall property which would not otherwise be authorised may be entered into if the Treasury has authorised it[1].

1 See PARA 324 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

341. Covenants.

All covenants, conditions and agreements contained in any lease or grant made under the Duchy of Cornwall Management Act 1863 and the Duchy of Cornwall Management Act 1982 are as effective as if the Duke of Cornwall were seised of an absolute estate in fee simple of the hereditaments to be granted[1].

1 Duchy of Cornwall Management Act 1863 s 24 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)). The duke may appoint a person to enter into contracts and agreements (see the Duchy of Cornwall Management Act 1863 s 34 (as amended); and PARA 329 ante) and, as a covenant is a type of contract or agreement, it is in practice more usual for obligations to be undertaken by the duke acting by the secretary. As to the secretary see PARA 322 ante.

As the definition of Duke of Cornwall includes the monarch when the duchy reverts to the Crown (see s 37; and PARA 319 ante) this constitutes an unusual case of the Crown being able to be bound by covenant. It extends beyond covenants in leases to restrictive covenants on sales: see s 24 (as so amended).

342. Consideration.

The consideration for the disposition of possessions of the Duchy of Cornwall[1] may be either a gross or an annual sum, or partly a gross and partly an annual sum; and where it consists wholly or in part of an annual sum, in the case of an alienation for a limited period, that sum must be payable during the continuance of the estate or interest parted with, the annual sum to be issuing and payable out of and to be charged upon the possessions disposed of[2]. The annual sum may be made subject to repurchase or redemption at such time and for such gross sum as may seem expedient[3]. The circumstances attending any disputed rights or claim and the outlay, if any, previously made in reclaiming, building upon, enclosing or otherwise improving the premises may be taken into account in determining the consideration, and a fair and reasonable allowance may be made in respect of it[4].

The amount of the consideration for the sale or disposal, if wholly or in part a gross sum, must be paid into the Bank of England or an authorised institution[5], and must be received by the bank upon production of a note signed by the keeper of the records of the duchy or his deputy specifying the sum to be paid, and that it is to be paid to the account of the duchy; the cashiers must carry in the sum so paid to the account of the duchy[6] and give a receipt without fee or reward[7].

If the consideration is wholly or in part an annual sum it must be dealt with as part of the revenues of the duchy, but in the case of repurchase or redemption the gross sum is to be paid into the bank and dealt with as in the case of gross sums paid in the first instance[8].

Persons paying money upon sales or disposals are not bound to see to the application of the money paid or answerable for its misapplication or non-application[9].

1 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

2 See the Duchy of Cornwall Management Act 1863 s 3 (amended by the Duchy of Cornwall Management Act 1893 s 1). The provisions in the Duchy of Cornwall Management Act 1863 s 3 (as amended) for an annual sum payable out of freehold land are now obsolete (see the Rentcharges Act 1977 s 3 (extinguishment of rentcharges); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 894), so that 'annual sum' now means rent service.

3 See note 2 supra.

4 See note 2 supra.

5 See PARA 349 post. As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

6 Such an account must be opened by the bank: see the Duchy of Cornwall Management Act 1863 s 4.

7 See ibid s 4.

8 See ibid s 4.

9 See ibid s 20; and PARA 344 post. If the instrument purports to be made under the authority of the Duchy of Cornwall Management Act 1863, purchasers are not bound to inquire whether the provisions of that Act have been complied with: see s 19; and PARA 344 post. The provisions of ss 19, 20 have the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as they have for the 1863 Act: see the Duchy of Cornwall Management Act 1982 s 10(3); and PARA 344 post.

343. Assurances.

The assurances effecting duly authorised sales, enfranchisements or disposals must be by deed[1] under the Duchy of Cornwall seal[2], and where the consideration is wholly or in part a gross sum of money, a memorandum must be indorsed on the deed and signed by the auditor of the duchy[3] acknowledging that the amount has been paid into the Bank of England[4] or other authorised institution in the manner directed, and specifying the date of payment[5].

1 The assurance may be in the form provided or any other more convenient form: see the Duchy of Cornwall Management Act 1863 s 5, Schedule. As to deeds generally see DEEDS AND OTHER INSTRUMENTS.

2 As to the duchy seal see PARA 327 ante.

3 As to the auditor see PARA 323 ante.

4 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

5 Duchy of Cornwall Management Act 1863 s 5. After enrolment (see PARA 345 post), the deed is valid and effectual as against the Duke of Cornwall (including all succeeding dukes and monarchs: see PARA 319 note 1 ante), and vests the property in the grantee according to its tenor, and is an effectual discharge for the consideration money expressed to have been paid: see s 5. As to payments see PARA 349 post.

344. Protection of purchasers etc.

A person claiming under any deed or instrument made or purporting to be made under certain powers conferred by the Duchy of Cornwall Management Act 1863[1] is not bound to inquire whether the transaction is in fact authorised by the Act or not, or whether it is or is not within the provisions and the true intent and meaning of the Act; but all such instruments when enrolled[2] are valid and effectual as against the Duke of Cornwall for the purposes for which they were executed[3].

No person paying any sum of money under the authority or supposed authority of the Duchy of Cornwall Management Act 1863 or in pursuance or purported pursuance of any of its provisions is bound to see to the application of the money so paid or is answerable for its misapplication or non-application[4].

1 Ie the power to alienate by sale or grant (see PARAS 332, 337 ante). This provision does not apply to powers of leasing (see PARA 334 ante).

2 As to enrolment see PARAS 345-346 post.

3 See the Duchy of Cornwall Management Act 1863 s 19. Section 19 has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the 1863 Act: Duchy of Cornwall Management Act 1982 s 10(3).

4 See the Duchy of Cornwall Management Act 1863 s 20. This provision applies to all payments under the Act without restriction. Section 20 has the same effect for the purposes of the 1982 Act as it has for the purposes of the Duchy of Cornwall Management Act 1863 Act: Duchy of Cornwall Management Act 1982 s 10(3).

345. Deeds requiring enrolment.

All deeds and instruments by which any property[1] is purchased or any of the possessions of the Duchy of Cornwall[2] are sold, disposed of, enfranchised, exchanged, leased, licensed to be demised, granted, charged or released, all agreements for references or submission to arbitration and any award made under reference or submission to arbitration under the powers of the Duchy of Cornwall Management Act 1863 must be enrolled in the duchy office within six months after their date[3]. The enrolment must be made by the keeper of the records of the duchy in order of time as the instruments are brought to the office, and a certificate of the fact and date of enrolment must be indorsed on the instrument[4].

If the enrolment is or has been omitted or delayed beyond the period limited or otherwise the Duke of Cornwall or any person appointed by him by sign manual warrant or, in the absence of such appointment, the keeper of the records of the duchy, upon reasonable cause shown for the omission or delay, may direct or permit the making of the enrolment out of time[5].

1 Ie manors, lordships, messuages, land, mines, minerals, tenements, hereditaments, rents, pensions, annuities, rights of common or mining or other charges or rights: see the Duchy of Cornwall Management Act 1863 s 30.

2 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

3 Duchy of Cornwall Management Act 1863 s 30. Section 30 has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the 1893 Act: Duchy of Cornwall Management Act 1982 s 10(3).

4 Duchy of Cornwall Management Act 1863 s 31. Section 31 has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the 1893 Act: Duchy of Cornwall Management Act 1982 s 10(3).

5 Duchy of Cornwall Management Act 1863 s 33. When made, the enrolment is to be as valid and effectual as if made within the period limited by the Act or otherwise: see s 33.

346. Effect of enrolment.

Enrolment has the same force and effect in all respects as enrolment or registration in the Central Office of the High Court, and the memorandum of enrolment written on the instrument and purporting to be signed by the keeper of the records of the duchy[1] or his deputy is evidence that it has been enrolled according to the tenor of the memorandum and to the statutory provisions[2].

1 As to the keeper of the records see PARA 322 ante.

2 See the Duchy of Cornwall Management Act 1863 s 32 (amended by the Supreme Court of Judicature (Consolidation) Act 1925 s 24(1)). The Duchy of Cornwall Management Act 1863 s 32 (as amended) has the same effect for the purposes of the Duchy of Cornwall Management Act 1982 as it has for the purposes of the 1893 Act: Duchy of Cornwall Management Act 1982 s 10(3).

As to enrolment of instruments see RSC Ord 63 r 10.

UPDATE

346 Effect of enrolment

TEXT AND NOTE 2--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

347. Proof of documents.

In the absence of evidence to the contrary the enrolment in the books of the Duchy of Cornwall office[1], or an examined copy of the enrolment, or a certificate of the enrolment purporting to set out a true copy of all or part of it and purporting to be signed and certified by the keeper of the records[2] is admissible evidence in all courts of justice and all legal proceedings as proof of the original of any deed, certificate, receipt or other instrument relating to the duchy possessions[3] which has been enrolled or so much of it as the certified copy sets out, or of the enrolment, without producing the original or calling any attesting witness, and as proof that the original was duly made, given or executed by the parties[4].

1 As to enrolment see PARAS 345-346 ante.

2 As to the keeper of the records see PARA 322 ante.

3 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

4 See the Assessionable Manors Award Act 1848 s 6.

348. Application of money received.

All gross sums of money received in respect of sales or disposals of Duchy of Cornwall possessions[1] under the Duchy of Cornwall Management Act 1863 are directed to be applied in paying expenses of the Duke of Cornwall in relation to them, in paying the purchase money of any property or rights purchased under the authority of that Act or the Duchy of Cornwall Management Act 1982[2] and the expenses of those purchases[3], and in paying to tenants sums corresponding to those which, if the tenancies were not tenancies from the Crown, would be payable by way of compensation under the Leasehold Reform Act 1967[4]. Such gross sums may also be applied in repaying the principal of any loan in respect of which duchy property has been charged with payment[5].

1 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

2 See the Duchy of Cornwall Management Act 1863 s 8 (amended by the Duchy of Cornwall Management Act 1868 s 1; the Mines and Quarries (Tips) Act 1969 s 32(2)(d); the Duchy of Cornwall Management Act 1982 ss 4(1), 10(2); and the Statute Law (Repeals) Act 1989 s 1(1), Sch 1 Pt II). As to the power to purchase land see PARA 336 ante.

3 See the Duchy of Cornwall Management Act 1863 s 8 (as amended: see note 2 supra).

4 Ie under the Leasehold Reform Act 1967 s 17: see s 33(5); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1512.

5 See the Duchy of Cornwall Management Act 1982 s 3(5). As to the charging of duchy property see PARA 333 ante.

UPDATE

348 Application of money received

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

349. Payments and bank accounts.

Payments out of money paid into the Bank of England[1] to the account of the Duchy of Cornwall under the Duchy of Cornwall Management Act 1863 must be made by draft under the hands of three of the councillors or regular officers of the duchy[2] authorised by the Duke of Cornwall by sign manual warrant, and drafts so drawn are sufficient authority to the bank to pay the amount specified to the person, or to the order of the person named, or to the bearer[3].

Other bank accounts, with the Bank of England and with any authorised bank or institution[4], may now be opened in the name of the duchy[5].

1 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq.

2 As to the councillors and regular officers of the duchy see PARA 321 et seq ante.

3 Duchy of Cornwall Management Act 1863 s 12.

4 Ie authorised under the Banking Act 1987: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 791. An institution authorised under the Banking Act 1987 includes a European deposit-taker: see the Banking Co-ordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 82(1), Sch 10 para 14.

5 See the Duchy of Cornwall Management Act 1982 s 6 (amended by the Banking Act 1987 s 108(1), Sch 6; and the Banking Co-ordination (Second Council Directive) Regulations 1992, SI 1992/3218, Sch 10 para 14). In the Duchy of Cornwall Management Acts 1863 to 1893, (1) any provision relating to the bank account of the Duke of Cornwall or the Duchy of Cornwall with the Bank of England is to be construed as relating also to any bank account authorised under the Duchy of Cornwall Management Act 1982 s 6 (as amended); (2) any provision requiring payment into the Bank of England is to be construed as requiring payment into that bank or an authorised institution; and (3) any other provision relating to payment into or out of the Bank of England is to be construed as relating also to payment into or out of an authorised institution: see s 6 (as so amended).

UPDATE

349 Payments and bank accounts

TEXT AND NOTES 4, 5--Duchy of Cornwall Management Act 1982 s 6 further amended, Banking Act 1987 repealed and SI 1992/3218 revoked: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649.

350. Investment.

Money received in respect of sales or disposals, and not immediately required for the purposes to which they are made applicable, may be laid out in the meantime in the purchase of annuities transferable at the Bank of England or any authorised institution[1], or in any authorised investments[2], in the name or to the account of the Duchy of Cornwall[3]. The bank is authorised and required to permit transfers of the annuities to be made in that name or to that account, and such transfers may be accepted by some officer of the duchy or other person authorised by the Duke of Cornwall[4].

Present or future investments so made may be varied for any of the investments authorised[5].

1 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq. As to authorised institutions, and the Duchy or the Duke of Cornwall's bank accounts, see PARA 349 ante.

2 Ie authorised by the Trustee Investments Act 1961 s 7 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 1019). As to trustees' powers of investment generally see ss 1-6, Schs 1-3 (Sch 1 as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1017 et seq. See also PARA 311 note 5 ante.

3 Duchy of Cornwall Management Act 1863 s 13, extended by the Duchy of Cornwall Management Act 1893 s 2 (as originally enacted) to include investments under the Trust Investment Act 1889 or any Act amending or extending it. The Trust Investment Act 1889 was repealed (except as to Scotland) and replaced, with amendments, by the Trustee Act 1893 ss 1, 50, 51, Schedule which was itself repealed and replaced, with amendments, by the Trustee Act 1925. The Trustee Act 1925 Pt I (ss 1-11) (as amended), so far as unrepealed, must now be read together with the Trustee Investments Act 1961. It seems to follow from the Interpretation Act 1978 s 17(2)(a), Sch 2 para 3, that investments of duchy money are now governed by provisions of the Trustee Investments Act 1961 and the provisions, so far as unrepealed, of the Trustee Act 1925 Pt I but investment of duchy property is not subject to the restrictions on wider-range investment imposed by the Trustee Investments Act 1961 s 2: see the Duchy of Cornwall Management Act 1893 s 2 (amended by the Duchy of Cornwall Management Act 1982 s 1). See generally TRUSTS.

The Duchy of Cornwall Management Act 1863 s 17 contains transitional provisions which are now spent.

4 Ibid s 13 (as extended: see note 3 supra). As to officers of the duchy see PARA 321 et seq ante.

5 Duchy of Cornwall Management Act 1893 s 2 (as amended: see note 3 supra).

351. Sale of investments.

The stock or other securities purchased in the name of the Duchy of Cornwall[1] may be sold by the direction of the Duke of Cornwall, when it is deemed necessary, and the money produced paid into the Bank of England or other authorised institution[2] to the credit of the duchy, to be applied in the same manner in all respects as money received in respect of a sale for a gross sum of money[3] under the authority of the Duchy of Cornwall Management Act 1863 or of the Duchy of Cornwall Management Act 1982[4]. The transfer of the stock or securities may be effected by any person appointed by letter of attorney under the hands and seals of any three persons authorised to sign drafts for payments out of the bank[5], and the bank must permit the transfers to be made, and is exonerated and precluded from seeing or inquiring whether the sale is for the purpose and in pursuance of the powers conferred[6].

1 As to the power to invest see PARA 350 ante.

2 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq. As to authorised institutions, and the Duchy or the Duke of Cornwall's bank accounts, see PARA 349 ante.

3 As to the application of money received see PARA 348 ante. As to the power to sell land see PARA 332 ante.

4 See the Duchy of Cornwall Management Act 1863 s 15 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)). Stock or other securities may be sold for purposes under the 1863 Act or the 1982 Act: see the Duchy of Cornwall Management Act 1863 s 15 (as so amended).

5 See PARA 349 ante.

6 See the Duchy of Cornwall Management Act 1863 s 16 (amended by the Duchy of Cornwall Management Act 1982 s 10(2)).

352. Dividends.

The dividends on stocks and securities purchased[1] must be paid by the Bank of England or other authorised institution[2] to the receiver general of the Duchy of Cornwall or his deputy[3] or lawfully authorised attorneys, to be accounted for and applied in all respects as part of the revenues of the duchy[4].

1 As to the power to invest see PARA 350 ante.

2 As to the Bank of England see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793 et seq. As to authorised institutions, and the Duchy or the Duke of Cornwall's bank accounts, see PARA 349 ante.

3 As to the receiver general of the duchy see PARA 322 ante.

4 Duchy of Cornwall Management Act 1863 s 14.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/6. DUCHY OF CORNWALL/353. Exchanges of land.

353. Exchanges of land.

With regard to any exchange affecting the possessions of the Duchy of Cornwall[1], the powers under the Inclosure Acts for effecting exchanges of land[2] are deemed and construed to authorise a dealing, for the purpose of the exchange, with mines and minerals and rights in respect of mines and minerals, either with or without any dealing with the ownership of the surface[3].

1 As to the possessions of the Duchy of Cornwall see PARA 331 ante.

2 See COMMONS vol 13 (2009) PARA 517. As to the Inclosure Acts generally see COMMONS vol 13 (2009) PARA 418 et seq.

3 See the Duchy of Cornwall Management Act 1863 s 41. As to mines and minerals generally see MINES, MINERALS AND QUARRIES. As to tin bounding in Cornwall see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 589.

7. CROWN PRIVATE ESTATES

354. Application of the prerogative.

At common law the general rule appears to be that the prerogatives of the Crown applicable to estates vested in the Crown as a body politic in right of the Crown extend to private estates vested in the monarch in her natural capacity[1]; and that since the law attributes to the body natural of the monarch all the qualities of her body politic, the latter estates can only be dealt with subject to the same incidents and formalities in general as the former[2]. Thus, a grant of land in the Duchy of Lancaster which was held to be vested in the monarch in his natural capacity separate from the Crown[3] was not void for the monarch's minority[4]; and other rules relating to the prerogative have been held applicable to Crown interests in the duchy[5].

In consequence, the monarch did not enjoy distinct private possessions but this became inconvenient. The Crown Private Estate Acts 1800, 1862 and 1873 now govern the matter[6].

1 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 213, 222; *R v Archbishop of York and Buck* (1591) Cro Eliz 240 at 241; *Alcock v Cooke* (1829) 5 Bing 340 at 351-354 per Best CJ; Co Litt 43a, b; 4 Co Inst 209.

As to Crown private estates see PARA 354 et seq post. As to the acquisition of land by the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 65.

2 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 213; see also Co Litt 43a-43b; *Willion v Berkley* (1561) 1 Plowd 223 at 234. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 7.

3 See PARA 300 ante.

4 See *Duchy of Lancaster Case* (1561) Plowd 212; and PARA 301 ante.

5 See PARA 301 ante. Private estates always passed by letters patent without livery and were not void for the minority of the monarch: see Chitty *Law of the Prerogatives of the Crown* p 206. As to Crown private estates see PARA 354 et seq post.

6 See PARA 357 et seq post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/7. CROWN PRIVATE ESTATES/355. Exceptions to application of the prerogative.

355. Exceptions to application of the prerogative.

In some cases private estates vested in the monarch in her natural capacity are not affected with prerogative privileges. Thus, where land was vested in the monarch in his natural capacity under a grant by a subject to Henry VII and the heirs male of his body begotten, he was bound by statute and took a fee tail estate by the form of the gift[1].

Land purchased before accession, or descending from collateral ancestors before or after accession, vests in the monarch in her natural capacity[2]; but if not granted away or devised they descend with the Crown upon the monarch's demise and become vested in her successors in right of the Crown[3].

Where land in gavelkind descended to the monarch and his brother, each took a moiety; but on the demise of the monarch his moiety descended to his eldest son, and not to all the sons equally[4].

1 See *Willion v Berkley* (1561) 1 Plowd 223; *Case of a Fine* (1604) 7 Co Rep 32a. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 842; CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 7.

2 Co Litt 15b note 4.

3 Chitty *Law of the Prerogatives of the Crown* p 206. See also PARA 361 post.

4 Co Lit 15b. As to the abolition of descent by the custom of gavelkind see EXECUTORS AND ADMINISTRATORS; REAL PROPERTY vol 39(2) (Reissue) PARAS 14-15.

356. Sources of private revenue.

The revenues which the Crown enjoys for the upkeep of the royal household[1] or for the monarch's private enjoyment are derived from (1) the annual income, known as the Civil List, granted by Parliament out of the public funds[2], and apportioned to meet the various heads of the expenditure required for the maintenance of the royal household, the privy purse and of certain members of the royal family[3]; (2) the revenues of the Duchy of Cornwall (when not vested in the Prince of Wales) and the Duchy of Lancaster, and of the Principality of Scotland (when not vested in the Prince of Wales), which, though of a hereditary nature and descendible with the Crown, have not been brought within the operation of the various Civil List Acts and consequent surrender[4]; and (3) the revenues derived from such estates as the monarch enjoys in her natural capacity as distinct from her political capacity of which, not being subject to any hereditary rights, she may dispose freely, although the manner in which these estates may be dealt with is to a large extent regulated by statute[5]. The occupied palaces are also at the disposal of the monarch[6].

1 As to the officers of the royal household see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 546-548.

2 Certain revenues were surrendered by the Crown in return for the granting of an annual income: see PARA 207 ante; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 69 et seq.

3 As to the Civil List see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq; and as to the privy purse see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 68.

4 As to the Crown's right to these revenues see PARA 207 ante. The Civil List Act 1952 does not make provision for the Duke of Cornwall, who has his own revenues from the Duchy of Cornwall, but it does provide for a widow of a duke. As to the Duchy of Cornwall see PARAS 318-353 ante. As to the Duchy of Lancaster see PARAS 300-317 ante. The revenues of the Principality of Scotland are subject to the law of Scotland. As to the Civil List Acts see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq.

5 See PARA 357 et seq post.

6 As to the occupied palaces see PARA 365 post.

357. Private estates.

The monarch enjoys certain estates in her natural capacity[1] as distinct from her political capacity of which, not being subject to any hereditary rights, she may dispose freely, although the manner in which these estates may be dealt with is to a large extent regulated by statute[2].

1 Purchases of land made by the monarch after the assumption of the Crown vest in the monarch as a corporation sole, but purchases made before accession or descents from ancestors after accession vest in the monarch in her natural capacity: see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 65.

2 See PARAS 354 ante, 358 et seq post. However, certain land enjoyed by the monarch in her natural capacity that remains undisposed of by grant, will or otherwise under the Crown Private Estates Acts descends as if the Crown Private Estates Acts had not been made: see the Crown Private Estate Act 1800 s 5 (amended by the Statute Law Revision Act 1888); the Crown Private Estates Act 1862 s 7; the Crown Private Estates Act 1873 s 1; and PARA 361 post.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/7. CROWN PRIVATE ESTATES/358. Statutory meaning of 'private estates'.

358. Statutory meaning of 'private estates'.

With regard to real property, the private estates of the Crown, as defined by statute, consist of such land, hereditaments etc of any tenure as are purchased out of money issued and applied for the use of the privy purse, or coming to the monarch in any manner from any ancestor or other persons not being kings or queens of the realm, or which, belonging to the monarch or any persons in trust for the monarch at the time of his or her accession, might have been legally disposed of by gift, sale or devise[1].

This definition was subsequently extended to such private estates of the monarch as become vested by gift, devise or disposition made by the monarch in any person who at the time of vesting or afterwards may be or become king or queen of the realm, unless the intention is expressed in the instrument making the gift, devise or disposition that the property should not continue to be held as private estates after the accession of the person entitled[2].

1 See the Crown Private Estate Act 1800 s 1; the Crown Lands Act 1823; and the Crown Private Estates Act 1862 s 1 (amended by the Statute Law Revision Act 1893). As to the privy purse see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 68.

2 See the Crown Private Estates Act 1873 s 1. The extended definition applies only to the provisions of that Act and those of the Crown Private Estates Act 1862. The provisions of the Crown Private Estates Act 1800 apply only to estates embraced by the narrower definition. This distinction must be borne in mind, notwithstanding the fact that the provisions of the 1800 Act have been largely superseded by the 1862 and 1873 Acts.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/7. CROWN PRIVATE ESTATES/359. Right to dispose of private estates.

359. Right to dispose of private estates.

The Crown's private estates[1] are exempted from the provisions and restrictions of the Acts restraining the alienation of Crown land[2] and of the Civil List Acts[3] and of any other Acts relating to real estate belonging to the monarch in right of the Crown[4].

Generally, the Crown's private estates may be disposed of by sale, gift or otherwise by any instrument under the royal sign manual attested by two or more witnesses, or by will or testamentary disposition signed by the testator or testatrix, or by some other person in his or her presence and by his or her direction, in the presence of two witnesses, as freely in all respects as by an ordinary subject[5]. Unless the contrary appears the will speaks and takes effect as if executed immediately before the death of the testator or testatrix[6].

Where land forming part of the monarch's private estates had been so devised by any monarch dying after 31 December 1833 to the monarch's heir, or to the person who should be the heir, the latter acquired the land as a devisee and not by descent[7].

Where land forming part of the Crown private estates was limited by the monarch by any assurance executed after 31 December 1833 to the monarch or to the monarch's heirs, the monarch acquired the land as a purchaser by virtue of the assurance, and was not to be considered to be entitled as of the former estate[8].

1 For the meaning of 'private estates' see PARA 358 ante.

2 Ie the Crown Lands Act 1702: see the Crown Private Estates Act 1862 s 2; and the Crown Private Estates Act 1873 s 1.

3 The Act referred to is 1 Geo 3 c 1 (Civil List) (1760) (repealed), but the exemption would extend by implication to all subsequent Civil List Acts. As to the Civil List see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq.

4 See the Crown Private Estates Act 1862 s 2; and the Crown Private Estates Act 1873 s 1. As to land remaining undisposed of on the demise of the Crown see PARA 361 post.

5 See the Crown Private Estate Act 1800 s 4 (amended by the Statute Law Revision Act 1888; the Mental Treatment Act 1930 s 20(5); and the Mental Treatment Act (Northern Ireland) 1932 s 7(2)); and the Crown Private Estates Act 1862 s 5. The Crown Private Estate Act 1800 s 4 (as amended) requires publication of the will and attestation by three witnesses; the Crown Private Estates Act 1862 s 5 provides that the will is to be valid if executed as stated in the text, but does not specifically direct attestation, and publication of the will is not required under it. As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

6 See ibid s 5.

7 See the Inheritance Act 1833 s 3 (amended by the Statute Law Revision (No 2) Act 1888), extended to Crown private estates by the Crown Private Estates Act 1873 s 2. It continues in force for the purpose of regulating the descent of entailed interests as equitable interests or of ascertaining who are to take equitable interests as heirs (see the Law of Property (Amendment) Act 1924 s 9, Sch 9); but the descent of real estate is now governed by the Administration of Estates Act 1925, and this Act binds the Crown subject to certain qualifications: see s 57. See generally EXECUTORS AND ADMINISTRATORS.

8 See the Inheritance Act 1833 s 3 (as amended); and note 7 supra.

360. Assurance by trustees.

Trustees of any real estate or interest in it must assure it as the monarch directs under the sign manual[1] attested by two or more witnesses[2].

1 As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

2 See the Crown Private Estate Act 1800 s 4 (amended by the Statute Law Revision Act 1888; the Mental Treatment Act 1930 s 20(5); and the Mental Treatment Act (Northern Ireland) 1932 s 7(2)). Acts relating to the conveyance of trust estates by 'infants, idiots and persons of unsound mind' were extended to such trustees: see the Crown Private Estate Act 1800 s 4 (as so amended). The provisions of the Trustee Act 1850 (repealed: see now the Trustee Act 1925) have been applied to trustees of Crown private estates; and proceedings to obtain the benefit of that Act on behalf of the Crown must be brought in the name of the person or persons authorised in writing under the sign manual: see the Crown Private Estates Act 1862 s 10. The Trustee Act 1925 binds the Crown: see s 71(4); and TRUSTS vol 48 (2007 Reissue) PARA 603. As to leaseholds held by trustees see PARA 362 post.

361. Descent of undisposed private estates.

Private estates undisposed of by grant, will or otherwise under the Crown Private Estate Acts[1] descend, on the demise of the monarch, as they would have done if those Acts had not been passed; and such land as is fee simple is subject to all the provisions and restrictions of the recited Acts[2] relating to Crown land held in right of the Crown[3].

1 Land descends with the Crown and becomes land held jure coronae in the hands of the successor: see PARA 355 ante.

2 The Acts recited are the Crown Lands Act 1702; 1 Geo 3 c 1 (Civil List) (1760) (repealed); and 34 Geo 3 c 75 (Crown Land Revenues) (1794) (repealed). See also PARA 359 note 2 ante. As to restriction on alienation see PARA 205 ante.

3 See the Crown Private Estate Act 1800 s 5 (amended by the Statute Law Revision Act 1888); the Crown Private Estates Act 1862 s 7; and the Crown Private Estates Act 1873 s 1. It would seem, therefore, that the revenues of such undisposed-of fee simple land fall under the provisions of the Civil List Acts and form part of the national revenues along with the other hereditary revenues. As to the surrender of revenues in return for Civil List income see PARA 207 ante. As to the Civil List see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 70 et seq. As to undisposed-of personalty see PARA 370 post. As regards the rules governing devolution of property on intestacy see generally EXECUTORS AND ADMINISTRATORS.

362. Leaseholds.

Such Crown private estates as are of leasehold tenure in England are directed to be vested in a trustee or trustees appointed from time to time under the sign manual[1] in trust for the monarch[2].

1 As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

2 See the Crown Private Estates Act 1862 s 3. As to leaseholds see also PARA 212 ante. There was also provision that private estates of copyhold or customary tenure should be vested in trustees: see the Crown Private Estate Act 1800 s 2 (amended by the Statute Law Revision Act 1888). As to private estates of such tenure see CUSTOM AND USAGE; FAMILY vol 12(1) (Reissue) PARA 697 et seq; and as to the abolition of copyhold and customary tenure in Crown land see REAL PROPERTY vol 39(2) (Reissue) PARA 31 et seq.

363. Proceedings relating to private estates.

Suits by the Crown relating to Crown private estates[1] not vested in trustees[2], wherever situate, and proceedings by the Crown relating to any debt or claim respecting the privy purse or any private personal estate subject to disposition by will, may be brought in the name or names of the person or persons appointed from time to time in writing under the sign manual[3]; and all suits and actions respecting private estates at the suit of other parties may be sued and carried on by summons or process directed against the persons so appointed[4]. This provision does not, however, affect any rights and remedies competent to the monarch with regard to any private real or personal estate[5].

Special provision is also made with regard to suits relating to the Duchy of Cornwall, but it seems that in the case of the Duchy of Lancaster the common law rules relating to the prerogative in suits and actions are applicable, the Crown, however, being represented by the Attorney General to the duchy[6].

1 For the meaning of 'private estates' see PARA 358 ante.

2 Proceedings to obtain the benefit of the Trustee Act 1850 (repealed: see now the Trustee Act 1925) with regard to Crown private estates vested in trustees are authorised by the Crown Private Estates Act 1862 s 10. The Trustee Act 1925 binds the Crown: see s 71(4); and TRUSTS vol 48 (2007 Reissue) PARA 603.

3 As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912. As to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13. As to the privy purse see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 68.

4 See the Crown Private Estates Act 1862 s 11 (amended by the Statute Law Revision Act 1893); and the Crown Private Estates Act 1873 s 3. The appointment is to continue during pleasure only: see the Crown Private Estates Act 1862 s 11 (as so amended).

5 See ibid s 12; and the Crown Private Estates Act 1873 s 4. The Crown Proceedings Act 1947 does not apply to proceedings by or against the monarch in her private capacity: see s 40(1); and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 56; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103.

6 *A-G of Duchy of Lancaster v Moresby* [1919] WN 69. As to the Duchy of Cornwall see PARAS 318-353 ante; and as to the Duchy of Lancaster see PARAS 300-317 ante. As to the Attorney General to the Duchy of Lancaster see PARA 305 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 538. The Crown Proceedings Act 1947 does not apply to proceedings by or against the monarch in right of the Duchy of Lancaster or by or against the Duke of Cornwall: see ss 38(3), 40(1); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/8. PALACES AND PARKS/364. Land subject to the Crown Lands Act 1702.

8. PALACES AND PARKS

364. Land subject to the Crown Lands Act 1702.

The revenues from the demesnes and management of the wastes of the Crown are now mainly under the management of the Crown Estate Commissioners[1], the Department for Culture, Media and Sport[2] or the Forestry Commission[3], but there remain certain lands which are still subject to the provisions of the Crown Lands Act 1702[4]. The most important of these lands are certain Royal Palaces[5] and Royal Parks[6].

1 As to the Crown Estate Commissioners see PARA 280 et seq ante.

2 As to the Department for Culture, Media and Sport see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq.

3 See PARA 278 et seq ante. As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

4 As to the provisions of the Crown Lands Act 1702 see PARAS 205, 284, 289, 308 ante.

5 See PARA 365 post.

6 See PARA 367 post. As to royal and other parks generally see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561 et seq.

365. Palaces.

Palaces[1] comprise the occupied palaces, the historic palaces and certain other premises.

The occupied palaces include Buckingham Palace, St James's Palace, Windsor Castle (but not Windsor Great Park, which is under the management of the Crown Estate Commissioners[2]) and the parts of Kensington Palace occupied by members of the royal family. These are retained as royal residences at the disposal of the monarch[3].

The historic palaces include the Tower of London, Hampton Court Palace (with its gardens and park)[4], Kew Palace (with Queen Charlotte's Cottage), Kensington Palace State Apartments (with the Court Dress Collection and Orangery) and the Banqueting House. These are managed in the interests of the national heritage by the Historic Royal Palaces Agency, which is an agency of the Department for Culture, Media and Sport[5].

The Palace of Westminster is a royal palace, but is managed by the two Houses of Parliament themselves[6].

1 As to the privilege of royal palaces see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 53.

2 As to the Crown Estate Commissioners see PARA 280 et seq ante.

3 Sandringham House is part of the Crown Private Estates. As to Crown private estates see PARA 354 et seq ante.

4 Hampton Court Palace is a royal palace but not a royal residence: *A-G v Dakin* (1870) LR 4 HL 338.

5 See the Civil Service Year Book 1998 col 119. As to the Department for Culture, Media and Sport see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq.

6 See PARLIAMENT vol 78 (2010) PARAS 995-996. The Palace of Westminster is not within the privilege of freedom from arrest as a palace (see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 53), having ceased to be a royal residence: *Combe v De la Bere* (1882) 22 ChD 316, CA. As to parliamentary privilege see PARLIAMENT vol 78 (2010) PARA 1076 et seq.

366. Government heritage lands.

A great variety of lands are vested in Ministers of the Crown for the purposes of their departments or are vested in the Crown but under the management of government departments. In particular, the Department for Culture, Media and Sport[1] is responsible for, inter alia, Somerset House, Trafalgar Square, Apsley House, part of Osborne House[2], Wellington Arch, Marble Arch and various statues in London[3].

The Historic Buildings and Monuments Commission for England, known as English Heritage[4], is responsible for the management of over 400 ancient and historic properties[5], some of which are on Crown land[6].

1 As to the Department for Culture, Media and Sport see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq.

2 See the Osborne Estate Act 1902 ss 1, 2 (s 1 amended by the Civil List Act 1910 s 9(3); and the Crown Estate Act 1961 s 9(4), Sch 3 Pt II).

3 See the Civil Service Year Book 1998 col 113; and the National Asset Register published by HM Treasury in November 1997.

4 As to the Historic Buildings and Monuments Commission for England see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 803 et seq.

5 See the National Asset Register published by HM Treasury in November 1997.

6 The National Asset Register published by HM Treasury in November 1997 lists eight properties in English Heritage ownership, 95 in the ownership of the Department of Culture, Media and Sport, three in English Heritage guardianship, 261 in the guardianship of the Department of Culture, Media and Sport, 29 in Crown Estate ownership, 11 in Ministry of Defence ownership and one in the ownership of the Department of Environment, Transport and the Regions.

367. Royal parks.

Powers of management of certain royal parks[1] which were vested in the Commissioners of Works[2] have now mainly passed to the Department for Culture, Media and Sport[3]. Such parks are subject to the powers conferred by the Parks Regulation Acts 1872 to 1974[4].

The royal parks at present under the management of the Royal Parks Agency (which is an agency of the Department for Culture, Media and Sport) are St James's Park, Green Park, Hyde Park, Kensington Gardens, Regents Park (with Primrose Hill), Greenwich Park, Richmond Park and Bushy Park[5]. The Royal Parks Agency also manages certain other areas including Brompton Cemetery, Parliament Square and Grosvenor Square Gardens[6].

1 Ie St James's Park, Hyde Park, Green Park, Kensington Gardens, Chelsea Gardens, the Treasury Garden, Parliament Square Garden, Regents Park, Primrose Hill, Victoria Park, Battersea Park, Greenwich Park, Kew Gardens (with the Pleasure Gardens and Green), Kew and Richmond Roads, Hampton Court Gardens (with the Green and Road), Hampton Court Park, Richmond Park (with the Green), Bushy Park and Holyrood Park: see the Crown Lands Act 1851 s 22 (as amended: see note 2 infra). For these purposes, 'Regents Park' does not include the part occupied by the Zoological Society of London: see the Crown Estate Act 1961 s 7.

2 See the Crown Lands Act 1851 s 22 (amended by the Statute Law Revision Act 1875; the Statute Law Revision Act 1892; the Crown Estate Act 1961 ss 1(2), 9(4), Sch 3 Pt II; and the Statute Law (Repeals) Act 1993).

3 See OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq.

Special provision has been made for certain parks. For example, powers of management in relation to historic buildings and parks in Scotland, such as Holyrood Park, are now the responsibility of Historic Scotland, which is an executive agency of the Scottish Office: see the Civil Service Year Book 1998 cols 881-882. As to the original transfer to the Secretary of State for Scotland see the Transfer of Functions (Scottish Royal Parks and Ancient Monuments) Order 1969, SI 1969/383. Various parks in London are now under the management of local authorities. As to parks in the Crown Estate see PARA 295 ante.

4 See OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 561.

5 See the Civil Service Year Book 1998 cols 119-120.

6 See the Civil Service Year Book 1998 col 120; and the National Asset Register published by HM Treasury in November 1997. Other responsibilities include Horseguards Parade and numerous sculptures, monuments, gateways, foundations and bandstands: see the National Asset Register published by HM Treasury in November 1997.

UPDATE

367 Royal parks

NOTES 2, 3--The Secretary of State for Culture, Media and Sport may authorise another person, or that person's employees, to perform the functions vested in him under the 1851 Act s 22 in relation to Hampton Court Gardens, Green and Road, Hampton Court Park and Kensington Gardens: Contracting Out (Functions in relation to the Management of Crown Lands) Order 2003, SI 2003/1908.

9. CROWN CHATTELS AND PERSONALTY

368. In general.

Certain chattels come to the Crown as casual revenues[1]. The right to waifs[2], estrays[3], wreck[4], bona vacantia[5] and treasure[6] is not itself a chattel. It is of the nature of these rights that they entitle the Crown (or a franchisee) to chattels, such as things thrown away by a thief, animals which have strayed, things coming from a ship in distress, things belonging to a deceased person or things found in the earth.

Other chattels belong to the Crown as such. The Crown jewels are recognised as having a special character[7], and in recent years the Royal Collections have been understood to have taken on a similar nature[8]. There are also items received by the monarch as gifts[9], and intangible chattels such as debts and copyrights[10].

Leases held on behalf of the Crown are chattels real, but the distinction is now mainly of historic interest[11].

1 As to casual revenues see PARA 216 et seq ante.

2 As to waifs see PARA 371 post.

3 As to estrays see PARA 372 post.

4 As to wreck see PARAS 270-277 ante.

5 As to bona vacantia see PARA 231 et seq ante.

6 As to treasure see PARA 373 post; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq.

7 As to the Crown jewels see PARA 374 post.

8 As to the Royal Collections see PARA 375 post.

9 Eg on official occasions, such as state visits to overseas countries where it is customary for the host and guest to exchange gifts, often of a unique interest. The monarch also receives gifts from subjects, but these are often of an ephemeral or perishable nature (eg a bouquet of flowers).

10 As to Crown copyright see PARA 377 post.

11 See REAL PROPERTY vol 39(2) (Reissue) PARA 3.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/9. CROWN CHATTELS AND PERSONALTY/369. Execution and distress.

369. Execution and distress.

The monarch's goods cannot be taken in execution[1], nor can a distress be taken on land in her possession[2]; nor may Crown chattels on the land of a subject be taken in execution or for distress[3].

1 See Chitty *Law of the Prerogatives of the Crown* p 376; and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 54. See generally CROWN PROCEEDINGS AND CROWN PRACTICE.

2 *Willion v Berkley* (1561) 1 Plowd 223 at 243 (which held that the King was not bound by private customs); *Anon* (1459) Jenk 112. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 54.

3 *Secretary of State for War v Wynne* [1905] 2 KB 845. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 54.

370. Personal property.

All personal estate consisting of money which may be issued or applied for the use of the privy purse, or not appropriated to any public service, or goods, chattels or effects not coming to the monarch in right of the Crown, are to be deemed private estate and effects of the monarch subject to disposition by will which, to be legally valid, must be in writing under the sign manual[1]. Subject to such testamentary disposition, private personalty is liable to all debts properly payable out of the privy purse, and subject thereto, and as far as undisposed of, is to go on the demise of the Crown in the same manner as it would have done if the Crown Private Estate Act 1800 had not been passed[2].

1 See the Crown Private Estate Act 1800 s 10. As to the privy purse see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 68. As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912; and as to the use of the sign manual in the case of illness or absence of the monarch see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 13.

2 See ibid s 10.

371. Waifs.

Waifs are things stolen and thrown away by the thief in his flight; and they belong to the Crown by prerogative right[1], as a punishment, it is said, to the owner for not having pursued the thief and retaken the goods[2]. The goods do not belong to the Crown until they have been seized on its behalf, and the property remains in the original owner if he can retake them before they have been so seized[3]. Even when they are in the hands of the Crown, the owner is entitled to restitution if he pursues the thief with due diligence, or if he afterwards brings him to justice and secures a conviction[4].

If the goods are hidden or left behind by the thief, they are not waifs, and the property remains in the true owner[5]. The goods of a foreign merchant, although stolen and thrown away in flight, are not waifs[6].

1 As to the prerogative see PARA 216 et seq ante. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 *Foxley's Case* (1600) 5 Co Rep 109a; 1 Hale PC 541. If a criminal in flight abandons his own goods, it appears that they belong to the Crown, but not until it is established that the criminal fled on account of his crime: Hawk PC 451; *Foxley's Case* supra at 109b. See also *Dickson's Case* (1627) Het 64; *Davies' Case* (1598) Cro Eliz 611.

3 1 Bl Com (14th Edn) 297.

4 1 Bl Com (14th Edn) 297. See also 1 Hale PC 541. As to orders for restitution see the Theft Act 1968 s 28 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 388-389.

5 *Foxley's Case* (1600) 5 Co Rep 109a.

6 Fitz Abr, Estray, 1. This is apparently an ancient rule for the encouragement of foreign merchants, who, being strangers, would not know our laws and language: see 1 Bl Com (14th Edn) 297.

UPDATE

371 Waifs

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

372. Estrays.

Estrays are valuable animals of a tame or reclaimable nature which are found wandering in any manor or lordship, and whose owner is unknown[1]. They belong to the monarch as general owner and lord paramount by way of recompense for the damage done, and to preserve the animal alive, unless, as is more generally the case today, they belong to the lord of the manor by grant or prescription[2].

However, the absolute property in estrays does not vest in the monarch until they have been proclaimed in the church and two market towns next adjoining the place where they are found and nobody has claimed them within a year and a day[3], but after that period they belong to the monarch or lord of the manor, even though the original owner be a minor or under any incapacity[4], and before that period the monarch or lord of the manor has the property against all but the rightful owner[5].

The monarch or her grantee is bound to feed and preserve the beasts from damage during the year and a day[6], and may milk or shear them[7], but a grantee is liable to be sued by the true owner if he uses them for purposes of labour[8].

If he claims within the year and a day, the rightful owner must pay the reasonable costs of feeding, keeping and proclaiming the estrays[9].

1 1 Bl Com (14th Edn) 297. Wild animals, such as bears or wolves, cannot be estrays, nor animals which are considered in this respect to be of no value, such as a dog or cat: see 1 Bl Com (14th Edn) 297; Fleta, lib 1, c 43. Swans may be estrays (*Case of Swans* (1592) 7 Co Rep 15b at 17a), but not any other fowl (1 Bl Com (14th Edn) 297). The monarch's beasts may not be taken as estrays: Bac Abr, Prerogative, B 9. As to trespass by animals see ANIMALS vol 2 (2008) PARA 752 et seq.

2 1 Bl Com (14th Edn) 297; *Taylor and James' Case* (1607) Godb 150. As to remedies for trespass by animals see ANIMALS vol 2 (2008) PARA 758 et seq.

3 Bro Abr, Estray, 3, 4, 5, 10; *Brownlow v Lambert* (1599) Cro Eliz 716; *Burdet v Mathewman* (1633) Clay 107.

4 Bro Abr, Estray, 3, 4, 5, 10; *Sir Henry Constable's Case* (1601) 5 Co Rep 106a at 108b.

5 Bac Abr, Prerogative, B 9.

6 1 Roll Abr 879. For the duty of a grantee of the franchise as to the custody of the animal taken as an estray see *Taylor and James' Case* (1607) Godb 150; *Pleydell v Gosmoore* (1623) Hut 67.

7 Com Dig, Waife, F; *Bagshawe v Coward* (1607) Cro Jac 147; *Anon* (1612) 12 Co Rep 101.

8 *Bagshawe v Coward* (1607) Cro Jac 147; *Anon* (1612) 12 Co Rep 101; *Pleydell v Gosmoore* (1623) Hut 67; *Oxley v Watts* (1785) 1 Term Rep 12.

9 11 Roll Abr 879; *Nicholson v Chapman* (1793) 2 Hy Bl 254; *Anon* (1612) 12 Co Rep 101; 1 Bl Com (14th Edn) 297; *Taylor and James' Case* (1607) Godb 150; *Pleydell v Gosmoore* (1623) Hut 67.

373. Treasure.

The common law doctrine of treasure trove, which provided that any gold or silver in coin, plate or bullion found deliberately concealed in a house, or in the earth or other private place, with the intention of recovery, the owner thereof being unknown, belonged to the Crown or a grantee having the franchise of treasure trove, has been replaced by a new regime under the Treasure Act 1996[1].

Under the new provisions, any treasure[2] found on and after 24 September 1997, whatever the nature of the place where the treasure was found and whatever the circumstances in which it was left, vests (subject to prior interests and rights) in the franchisee[3], if there is one, or otherwise in the Crown[4]. Treasure so vesting in the Crown is to be treated as part of the hereditary revenues of the Crown[5].

1 See NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq.

2 For the meaning of 'treasure' see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1086.

3 See NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084.

4 See the Treasure Act 1996 s 4; and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084.

5 See ibid s 6(1); and NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084. As to the hereditary revenues of the Crown see PARA 203 et seq ante. As to the surrender of the hereditary revenues see PARA 207 ante.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/9. CROWN CHATTELS AND PERSONALTY/374. Crown jewels.

374. Crown jewels.

The monarch may not grant away the jewels of the Crown[1], which are heirlooms and as such do not pass to the executor[2].

1 Vin Abr, Prerogative, M, b, pl 21. But see contra *Lord Hastings v Douglas* (1634) Cro Car 343 at 344, where it is said they may be granted by letters patent during the monarch's life, but not by testament.

2 Co Litt 18b; *Earl of Devonshire's Case* (1607) 11 Co Rep 89a at 92a. See also CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 58.

Halsbury's Laws of England/CROWN PROPERTY (VOLUME 12(1) (REISSUE))/9. CROWN CHATTELS AND PERSONALTY/375. The Royal Collections.

375. The Royal Collections.

The Royal Collection of pictures and works of art is in law in the ownership of the monarch. For many years there has been an understanding accepted by the monarch and operated by the Royal Household that the Royal Collection comprises all pictures and works of art purchased or acquired by all monarchs up to the death of Queen Victoria and also certain property acquired by monarchs and their consorts[1] since the death of Queen Victoria which has been specially allocated to the Royal Collection[2]. The Royal Collection is regarded as passing in right of the Crown from monarch to monarch and therefore inalienable[3].

There is also the Royal Archive, which includes the Royal Library[4], and the Royal Photographic Collection.

The Stamp Collections made by George V and George VI, although private collections, are for practical purposes regarded and operated in a similar way to the Royal Collection of pictures and works of art[5]. Certain items of jewellery are regarded by the monarch as heirlooms[6].

None of these Royal Collections or heirlooms are regarded by the monarch as being at her personal disposal[7].

The Royal Collection is under the management of the Royal Collection Trust which is a registered charity subject to the jurisdiction of the Charity Commissioners[8].

1 As to the property of the monarch's spouse or consort see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARAS 28-29.

2 See *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 2). The Crown Private Estate Act 1800 s 10 recognised that personal estate and effects including goods and chattels were the property of the monarch and could be disposed of by will so long as they or had not passed in right of the Crown or were not moneys appropriated to the public service.

3 See *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 2). However, items of minor importance surplus to the Royal Collection are occasionally sold to raise funds for the purchase of other items of special interest; and certain very minor works and duplicate items once owned by Queen Victoria are occasionally disposed of as presents to the Commonwealth or for similar purposes: see *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 2).

4 The Royal Library was bequeathed by William IV to subsequent monarchs and is therefore inalienable. Subsequent acquisitions are treated in the same way: see *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 3).

5 See *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 3).

6 See *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at p 3).

7 See *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29) (minutes of evidence taken before the Select Committee on the Civil List at pp 3, 4).

8 As to the registration of charities see CHARITIES vol 8 (2010) PARA 304 et seq; and as to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

376. Government chattels.

The government has a great variety of chattels[1] in connection with its public functions[2]. In particular, the Department of Culture, Media and Sport[3] is responsible for the Government Art Collection and also supervises many museums and galleries[4], which may be set up as legal entities with a separate existence from the Crown[5].

1 Eg office equipment, defence material and maintenance vehicles.

2 These are listed in the National Asset Register which was published by HM Treasury in November 1997.

3 As to the Department of Culture, Media and Sport see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 519. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 498 et seq.

4 See the Civil Service Year Book 1998 cols 111, 114.

5 See generally NATIONAL CULTURAL HERITAGE.

377. Crown copyright.

There appears to have been a prerogative copyright claimed by the Crown following the introduction of printing[1]. Crown copyright is now governed by the Copyright, Designs and Patents Act 1988[2] and applies to a work made by the monarch or by an officer or servant of the Crown in the course of his duties[3].

1 Chitty *Law of the Prerogatives of the Crown* p 238.

2 See the Copyright, Designs and Patents Act 1988 ss 163, 170, Sch 1 paras 40-42; and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 144 et seq. There are separate provisions for Parliamentary copyright: see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 150 et seq; PARLIAMENT vol 78 (2010) PARA 994.

3 See the Copyright, Designs and Patents Act 1988 s 163; and COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 144. It appears that other members of the royal family have their own independent copyright: see *Albert (Prince) v Strange* (1849) 1 Mac & G 25 (decided before the introduction of the modern statutory copyright).